

**Hearings Before Joint Committee of
the Senate and House of Repre-
sentatives on Interstate and
Foreign Commerce.**

**Under Senate Joint Resolution, No. 60, to
Investigate Government Control, Regu-
lation and Ownership of Interstate
Public Utilities.**

**Oral Argument of
ALFRED P. THOM**

Counsel, Railway Executives' Advisory Committee

ALSO

**Examination of Mr. Thom by Members
of the Committee.**

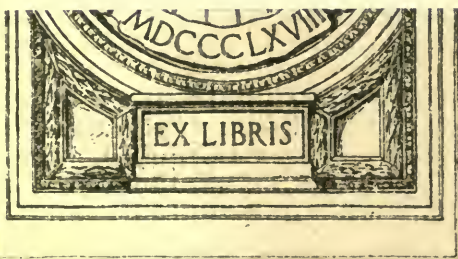
WASHINGTON, D. C.

NOVEMBER 23, 24, 25, 27, 28, 29,

DECEMBER 1, 2, 1916



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SYNOPSIS OF SUBJECTS CONSIDERED IN THE ARGUMENT
OF ALFRED P. THOM.

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STATEMENT OF MR ALFRED P. THOM,
Counsel, Railroad Executives' Advisory Committee.

Mr. THOM: Before proceeding to discuss the questions which you have under consideration, I would like to state that I have tendered to the clerk copies of two printed pamphlets which we have prepared, and which contain certain questions that we would like to have the various witnesses consider as they appear. One of them is intended for the consideration especially of bankers, and the other is intended especially for the consideration of economists and publicists. When we learned that certain economists and publicists had been invited by the committee, I wrote to each one of them a letter which I shall now read to this committee, sending each one a copy of these pamphlets, intended for the consideration of the publicists:

"OCTOBER 26, 1916.

"MY DEAR SIR: I understand that you have been, or will be, invited to appear before the Joint Committee of Congress appointed by the President under the joint resolution approved July 20, 1916, to study the entire subject of transportation.

"In my capacity as counsel for the railroad at this hearing, I shall ask that your attention be directed to certain aspects of the inquiry and that you be invited to give your views in respect to them.

"It has occurred to us that, in an inquiry of such importance, you may desire an opportunity in advance for mature reflection in respect to the subjects about which you will be expected to testify, and I am accordingly taking the liberty of handing you herewith a list of the subjects which I will ask the committee to specifically bring to your attention. It is not our purpose to over-burden you in the matter of your preparation, and there may be some subjects in the enclosed list which you would prefer not to take the time to consider. If you will call any such

matters to my attention I will, so far as you are concerned, withdraw my application to the committee in respect to them. May I suggest that, in so far as you feel disposed to give your views on these subjects in your main statement to the committee, the time involved in putting them before you by specific questions will be saved.

"Trusting that the enclosed list of subjects may facilitate you in the consideration of some of the vital aspects of this inquiry, I remain,

"Sincerely yours,

"(Signed)

ALFRED P. THOM."

Senator BRANDEGEE: Is the list of inquiries that you sent them to be made part of the record at this immediate point?

Mr. THOM: No; I just submit it for the use of your committee. I would like to have the members of the Committee read over these questions.

Mr. ADAMSON: Why not let them be printed in the record as part of your statement here?

Mr. THOM: I have no objection.

Senator CUMMINS: Where is the list of questions?

Mr. THOM: They are right there (indicating).

Mr. ADAMSON: I think that ought to go in the record as part of your statement.

Mr. THOM: They are there for the consideration of each one of you gentlemen.

Senator BRANDEGEE: Inasmuch as the letter transmitting those questions has been made part of the record, I rather think the questions themselves should be.

Mr. THOM: I did not care to have any of those made part of the record. I have no objection to its being done, however.

Mr. ADAMSON: That ought to go in.

The CHAIRMAN: If there is no objection that will be made part of the record.

Mr. THOM: What I would like for the committee to do is to read over those questions and when the witnesses go

upon the stand to bring out from them testimony in respect to those particular features of the inquiry, if the committee shall deem that it is wise and pertinent to do so.

Mr. ADAMSON: Mr. Thom, I think that when that time comes the committee will suggest, if you do not offer to do it yourself, that you have the right to ask them any questions that you choose.

Mr. THOM: I would be very glad to do so. I did not know that I would have that privilege.

Senator UNDERWOOD: Mr. Chairman, I do not like to interrupt, but I hope that remark that has just been made by the gentleman from the House will not go uncontroverted, because I would seriously protest, myself, having either side here represented by counsel.

Mr. ADAMSON: I did not mean that.

Senator UNDERWOOD: I hope there will be no decision made upon that question unless it is considered in executive session.

The CHAIRMAN: That matter will be considered in executive session.

Mr. ADAMSON: I did not mean that there should be any counsel, but I do mean that any American citizen who wants to ask a question can, by permission of this committee, be allowed to ask it.

The CHAIRMAN: Will you proceed, Mr. Thom?

Senator CUMMINS: May I ask you a question, Mr. Thom, with regard to the title of this pamphlet. "Subjects which economists and publicists will be asked to consider."

Mr. THOM: Yes.

Senator CUMMINS: Asked by whom?

Mr. THOM: Me. I wrote them this letter. I accompanied that with this letter.

I was in position, if I may pursue that matter a little further—of course I was in the position of not being able to reach and to confer with the vast number of economists all over the country, and there were certain subjects which

I wanted them to consider. Therefore, I had them written out and printed in that way, and accompanied them with the letter which I have just read.

Senator CUMMINS: It means, then, that these are subjects which you asked them to consider?

Mr. THOM: Yes, I stated that in this letter, that as counsel for the railroads, there were certain subjects I desired to call to their attention, and ask them to consider, and I sent them in that way. Mr. Chairman and Gentlemen.

The CHAIRMAN: Mr. Thom.

Mr. THOM: By the joint resolution which has been read into the record this committee is required to make a comprehensive study of the whole subject of transportation. Twenty-nine years have now passed since the policy of governmental regulation was adopted by the United States. The President, in his message to Congress on the seventh of last December, suggested the wisdom now of taking a new assessment, as he expressed it, of the facts and conditions relating to transportation, which should be made in the light and with the help of these twenty-nine years of experience.

Difference in the Regulation of Transportation and of Banking.

At the outset of your deliberations it may be helpful to you—it certainly will be helpful to me—to review some of the historic facts relating to the adoption of governmental regulation. We must note at once the vast and fundamental difference between the genesis of the system of regulation of transportation, and the genesis of the system of regulation of any other commercial agency by the United States. For example, let us take the establishment of the national banking system: the system of governmental regulation which was adopted in respect to that came into being with the

establishment of the banking system, and as a part of a constructive programme to build up efficient banking agencies by the National Government. The system of regulation of railroads has an entirely different history.

Railroad Building Welcomed by Public.

Railroads did not come into existence by the fiat of government, as a matter of national policy, but the railroads were originated as a matter of private enterprise and initiative in obedience to the appearance of economic wants, and came in a desultory way. They were more than welcomed by the public. On every hand there appeared a public policy, which was unmistakable, to set no limit to the matter of encouragement, if only the railroad facility could be provided. The most liberal charters were granted, subsidies were voted by legislative bodies, lands were granted in millions of acres, all to encourage the establishment of railroad facilities. There was no limitation in most cases put upon the powers of these chartered agencies in respect to what they might do in regard to their charges, but if a limitation was put, it was put so high that it did not amount to a limitation in practical affairs.

Public and Investors Regarded Railroading as a Private Business.

Now, the result of that was to create the impression—I may say, to create the conviction on the part of the man who invested his means in a railroad, that he was investing it as he would in any other private enterprise. No other conception was in the public mind, because the need for it had not then appeared; no other conception was in the mind of the investor; he had had no reason to have any other conception, as he was not only welcomed but urged by the public to enter upon this field of human industry. Now, what

was the effect of that? Examining human motives, watching the operation of human interests and human forces, what was necessarily the effect of that, in the first instance, upon the conception of the investors in these properties as to their rights? Inevitably, it produced the impression that they had engaged in a private business, and that they owned it and could use it for their private ends.

Conception Fundamentally Wrong.

Now, time went on. We all appreciate that that conception was based upon a fundamental and a far-reaching error; we understand that now, but at the time nobody understood it; nobody advanced it; nobody insisted upon it; and then these people who had made these railroads, commenced to use them for their private purposes; they commenced to sell at wholesale cheaper than they sold at retail, as any other man controlling his business does now; they commenced to make different terms to different parties and to different communities; they commenced to exploit them in a financial way as private enterprises, and, gradually, the great public mind awoke to the fact that abuses were creeping in, and there came to be here and there demands that that sort of favoritism which made the prosperity of one community and destroyed the prosperity of another, ought to stop. As the abuses multiplied and as the hurtful condition of the unregulated use of this tremendous agency began more and more to appear, the public feeling on the subject arose in like proportion, and there soon became a demand on the part of the public that these abuses must cease: that the thing of inequality of the terms on which men and communities could do business, must be abandoned, and the conception took hold of the public mind that there was, necessarily, a public duty imposed upon this tremendous agency of development and of commerce. I have heard it contended, as you have, that the public right in respect to these properties grew out of the bestowal of the right of eminent domain.

I have never been able to accept that view, for a moment's reflection will show you that if you buy every foot of your right of way and build upon it a railroad, that there must be limitations of ownership and use upon that, just as much as if you had used the right of eminent domain. The foundation of the public right, to my mind, is not the bestowal of the right of eminent domain, but it is the possession of a tremendous agency, powerful enough to make and unmake prosperity, and powerful enough to affect national destinies. No matter what its form, no matter what the privileges that were bestowed—whether they were given or bought—the result of the existence of an agency so powerful as this would be to impose upon it, from the very necessities of the case, a public right in respect to its use and in respect to its ownership.

Public View Changed and Was Right.

Now, we can well imagine the effect of the clash of those principles, the conflicting conceptions of the use of these properties—the investors on the one side naturally clinging to their view of private ownership, and naturally resenting a denial of the full use of private property. On the other hand, the public, having once seen the operation of these forces, would necessarily continue to insist on that point of view, and the judgment and the conscience of the world has come to appreciate that the public view of that question was the sound one. But there was a controversy; there was a conflict of conceptions; there was a conflict of interests, and it came to be a great political question—the owners of these railroads on the one hand fighting for what they conceived to be their private rights of property and unwilling to accept in any degree, even a qualified degree, the right of public regulation; on the other hand, the public insisting that these agencies must be regulated and controlled, or they would become larger than the Government itself—and so the fight went on.

Public View Won and System of Correction Imposed.

It went on relentlessly and without yielding on either side; and when the victory came, it came on the side of the public conception of the public character of these instrumentalities of commerce, but it was a victory won in anger; it was a victory which was the outcome of fierce conflict, and the terms that were imposed were the terms of the victor upon the vanquished and reflected merely the purpose to apply in the principles of the system of regulation the forces of correction and punishment. So this system, which was established by the National Government twenty-nine years ago, was the outcome of this bitter conflict of policies and views and conceptions, and looked only to what the public had in its mind, and that was the eradication of abuses.

I call your attention again to the fundamental difference between that situation and the situation in regard to the regulation of banks. In the matter of the regulation of the banks the system of regulation was a part of a constructive program. In the matter of the regulation of the railroads, regulation became a part of a destructive program. In the matter of the regulation of the railroads, regulation became part of a destructive program, destructive of abuses, and intended merely to protect the public interests as they then appeared.

Time for Constructive Regulation.

Now, gentlemen, we are confronted today with the question whether it is possible to have that policy of correction the permanent policy of this Government. You, with your tremendous responsibilities upon you, have to consider the question whether now the system of correction has gone far enough for you to take stock and to inquire whether there must be introduced some other principles beside the principle

of correction in your system of national regulation. You must inquire, whatever may be your determination upon that question, whether you may think that the processes of correction have gone far enough or not, you must further consider whether, if they have not gone far enough, there is corrective power enough in this system of regulation to deal with all that is left of abuses, and whether under that condition the time has come for you to introduce principles of encouragement, of helpfulness, and of constructiveness in this system of regulation.

Public Interest the Test.

Gentlemen, I shall discuss this question not from any altruistic standpoint, but with the acceptance of the standards that whatever I say and whatever I may propose must come up to the standard of the public interests, must be measured by that standard and satisfied or it will be discarded. I will not make any plea to you for private interests. I appreciate that I stand here with no more right to ask the exercise of your governmental powers in the protection of my private interests, if they are in a railroad, than I would have if they were in a farm or in a factory or in a mercantile enterprise. My private interests have no place here. The things that I say and the things that are proposed must be measured by the standard of the public interests, and must be determined by the standard of the public interests, and I shall make no other argument.

Public Interest is Primarily in Facilities.

Now, what is the public interest in respect to transportation? Let us pause for a moment and get that in our minds. As I read the needs of the public, they are to be assured of a sufficiency of railroad and transportation facilities now and in all the future, and of course to be assured of them on reasonable terms, but if it becomes a question between

high charges and the existence of these facilities I suppose there will be no dissent from the fact that the public interest is, after all, in having the facilities.

I can not forget that I was present in this room just before the first of last September when the Senate Committee on Interstate Commerce was confronted with the menace of an immediate suspension of all the transportation facilities of the United States by a threatened strike, and in the presence of the possibility of that suspension there was no thought in any man's mind except of continuing the use of those facilities by the public. I heard no suggestion of the rates or the charges. I only saw that the attention of the Congress of the United States was directed to the fact that there was impending a great national catastrophe which would involve the suspension of communication between persons and communities throughout the Union, and that the whole attention and the whole power of government was directed toward finding a method by which those facilities could be continued. I read in that incident the value that the public put upon transportation facilities.

Facilities are Inadequate.

Nor can we close our eyes to the fact that at this moment commerce is being impeded and in some cases halted by a lack of cars to carry the freight that is waiting upon the sidings throughout the land, and how the attention of everybody is now directed to the fact that that again is a catastrophe which must be averted; so that as I see the public interest, it is that there shall be preserved in some way a transportation capacity equal to the public needs, and in that connection I call your attention to the fact that whether or not you think that the great transportation structures of this country are still too high, or right, or else too low, that you must, it seems to me, conclude that the existing powers of regulation are adequate to deal with that question of exorbitant rates.

We have no controversy any longer about a lack of power to deal with rates that are too high. Some think that they are none too high, others disagree with that view, but all appreciate that the existing governmental systems are adequate to deal with the question of the level of rates, to the extent of preventing them from being exorbitant. So that we must come back to this question of whether or not I am right in insisting that the fundamental and essential interest of the public is now in the great question of whether or not existing systems guarantee to the public an adequate supply of transportation facilities, not only for the present, but for the future.

Criticism of Past Errors Will Not Relieve Condition.

Some gentlemen might say that there have been great railroad abuses; that there have been great errors of railroad judgment; that there have been great crimes in financial matters of some of the railroads, and attempt to present that view to this committee, and to say that the difficulties under which the railroads now labor are caused, at least to some extent, by the faulty management of the railroads themselves.

Gentlemen, I ask you to confront that proposition with this question: What remedy does that theory propose for the needs of the people in respect to the continuance of railroad facilities? The advocate of that view has turned his face to the past. He is insisting on your shutting your eyes to the needs of the future, by trying to arouse your indignation in respect to what he conceives to be the errors and misdemeanors of bygone days, or, if he pleases, of present days; but what did he do? What did he propose as a means of providing for the future? At last, the question will be, and I will try to define the issue in such a way that it may be accepted by all of us, no matter what our views—the question will be this: those who propose a change in existing

methods, must make their appeal to the judgment of the people, upon the proposition that existing methods do not assure to the public the supply of transportation facilities that the public needs, and those who oppose any change, must make their appeal to the public judgment on the proposition that existing conditions, if honestly administered, do assure to the public an adequate supply of transportation facilities. Now, is not that a fair statement of the issue which we should debate? Is not that an issue which must control the decision of this question?

Adequate Facilities are Essential.

The continuance of the certainty of adequate transportation facilities, is paramount, and must control the ultimate decision of this question. Gentlemen can not be heard who appear here, jealous of local rights and jurisdictions, unless they can show that under those local rights and jurisdictions the public needs, present and future, are protected. No theoretical view of the proper distribution of governmental powers can have any weight with you or with the judgment of the people of this country, unless under the proposed distribution of governmental powers adequacy of the transportation facilities of the country is assured. No private interests, no cherished theories of government, can be permitted to enter here, unless they come with a guarantee in their hands that what they propose will protect the public in the matter of transportation facilities.

Therefore, gentlemen, I shall debate this question on the theory that I must sustain the propositions which I shall advance, by showing not only that the public interests are promoted by them, but that they tend to give greater assurance to the public of the continuing sufficiency of transportation facilities in this country.

Need of Facilities is the Paramount Issue.

May I not fairly ask of anyone who shall oppose my views, or who shall have any counter propositions to make, that they accept the same conditions of debate? May I not fairly assume that I have the approval of the public judgment in trying to make this discussion turn upon that one question? I do not believe that if you gentlemen conclude that there is now a sufficiency of transportation facilities, that existing policies adequately assure them for the future, that you would be inclined to any change, and I do not believe that if you are convinced that present systems menace the continuance of adequate transportation facilities, and that something must be done to assure them to the public, that any other idea will hold you back. I believe that is going to be the dominant thing in your minds when you come to perform the great duty which has been entrusted to you.

Congestion of 1907 and 1916.

Now, let us inquire into that question. Have there been no signs which an intelligent mind cannot mistake of a menace to your transportation facilities? Has nothing occurred to arrest your attention? Have we learned no lesson from what happened in 1907, when there was a substantial increase in the business offered to the railroads, and lack of yards, lack of tracks, and lack of cars brought on the "panic of plenty" in that year? Have we forgotten that the panic of 1907 was not a panic of scarcity, not a panic of failures in business, but was a panic brought on by the inability of communities to deal with one another because the railroad facilities were inadequate? Congestion everywhere; not yards of sufficient capacity for trains; not tracks sufficient to carry them; not cars sufficient to transport the business of the people. There, in that year, in the midst

of that plenty came panic, due to those factors. Have we forgotten the fact that in this last spring it became necessary to put embargoes upon the receipts of business in many parts of this country, including your own country of New England, Senator Brandegee, due to the fact that you did not have yards enough and terminals enough to handle your business? And that embargo was of sufficient importance to cause a member of the Interstate Commerce Commission, Commissioner Clark, to go and take personal charge, with a committee of railroad men, of that situation and try to work it out, and it remains unremedied to this day, because the fundamental want of yards and terminals and facilities has made it impossible. Do you forget the fact that at this present moment there is such a scarcity of railroad equipment, that the commercial interests of the country have risen in arms and the Interstate Commerce Commission is conducting an investigation in the City of Louisville, through one of its members, in order to find a way of supplying with cars the commercial needs of this country?

Suspension of Railroad Construction.

Are we justified in taking no note of the fact that in the last year there has been a smaller railroad construction than in any year leaving out the Civil War, since 1848, and that in the last year there have been less than 1,000 miles of new railroad constructed in the United States? In a field which has heretofore been an inviting field of private enterprise; in a field that has found heretofore at every hand investors who are seeking to invest their surplus means, we found in the last year that railroad construction into new territory has been, in effect, arrested, and that nothing is going on in the way of carrying this pioneer of progress into the untouched wealth of the American continent.

Suspension of Construction May Be the Cause of High Cost of Living.

Do we appreciate the fact that this suspension of railroad construction may be the cause, for which we are all seeking, of the world-wide disaster which has come in the high cost of living? Political parties have entertained different views with respect to the cause of the high cost of living. One of the great parties and perhaps both at one time, felt that it was to be found in the hurtful combinations of productive interests, and anti-trust laws were adopted as a means of meeting that unfortunate condition. Another one of the great parties found the explanation in the tariff, and came into power with the proclamation that if they could be allowed to lower the tariff that living cost would likewise disappear.

Both have been tried, and the cost of living is going up all the time. Why not come back to consider the fundamentals of a matter of this kind? Why not come back and inquire what the quantity of supply has to do with the high cost of living? Why not come and inquire whether it is time for the policy of these United States to develop the rich agricultural and mining and forest reaches which it has, and bring them in and lay them at the feet of human need? Why do we conclude that if we have the high cost of living with the wheat crop at a certain figure, that we would have it no lower if we could double the wheat crop? Why do we conclude that if manufactured implements are too high at the present time, that we could not reduce them if we increased the supply of the raw material? Why do we conclude that it is proper national policy to abandon the hope of touching the great areas of productiveness and supply in this country, and bringing them and putting them within the reach of human wants, as a means of meeting the greatest problem with which the poor man of this country has ever yet been confronted? Are there no wheat fields yet

untouched? Are there no mines yet unopened? Are there no forests yet uncut, to which we can go to increase our supply and by increasing the supply in proportion to the demand do something to reduce the cost of living? And yet, with that great and pressing problem upon us, seeking for some solution, we have by some force, by the operation of some conditions, put a stop to the construction of railroads in new and unprovided territory.

With that fact before us, can we conclude that the present railroad facilities are adequate to the needs of the public?

Unequal Distribution of Railroads.

Another thing that we see—we note the fact that railroad construction has been suspended in this country not at the point of equal distribution of railroad facilities to the various States or the various commercial communities, but it has stopped at a point where many of the communities of this country are far in advance of many others, where there is an unequal distribution of railroad facilities to the people having a common citizenship and a common right in the United States. For example, we find that in the State of New Jersey there are 30.8 miles of railroad for every 100 square miles of territory—practically 30 miles. We find in Wyoming that they have 1.94 miles. We find in Virginia, where I come from, that we have $11\frac{3}{4}$ miles. We find in the State of the honorable House chairman of our committee, Georgia, that they have 12.65 miles; that they have in Idaho 3.35 miles; that the average in the United States is 8.53 miles.

Are the people of this country to be satisfied? Will they long be content with the statesmanship which halts the provision of transportation facilities at that point of inequality?

I have had made a map of the State of Idaho as an example. I have had drawn from the railroad lines in that State parallel lines from seven to ten miles away, what is supposed to

be a convenient hauling distance, to show the vast area of productiveness still left untouched, and I have had circles put upon the map to show the mineral areas. There appear upon it immense forest areas; there appear upon it the immense areas of arable land yet unsupplied with transportation facilities, all waiting for the enterprise of man to provide the carrier facilities essential to lay what that State can produce at the feet of the American people. I am having prepared similar maps which will be presented by witnesses in this investigation covering other States, and possibly the whole United States, to show the regions to which American needs may yet apply for an increase of their supplies, and as a means of decreasing their cost of living.

Now, gentlemen, with those facts before you as to what has happened now to the people supplied at least nominally with transportation facilities, as to the failure whenever you put upon it the pressure of increased business, and as to the vast territories in this country which something is preventing from being supplied with transportation facilities, are we not safe in reaching the conclusion that the transportation facilities of the country are not now provided up to the point that the public needs require, and that there is no provision for the future which will assure them, under existing conditions, adequate transportation facilities?

Transportation System is Not a Completed Instrumentality.

It must not be forgotten that transportation is never a completed instrumentality. No railroad is ever finished except among a people that are dead, and as long as commerce grows so must transportation facilities grow, for the facilities of transportation set a maximum limit upon the productive capacity of the people.

They can produce no more, and they will produce no more than they can get to market, and when you limit your transportation capacity, you limit the capacity of your people for productiveness and for usefulness in human endeavor. They

cannot stand still. Even the Pennsylvania Railroad, with its magnificent facilities, is not a completed property, and much more so, in all the territory from which I come and from which most of you gentlemen come, the transportation facilities on which your people rely are not completed, and, unless the communities perish, they can never be completed. They must go on growing as the days go, and as human genius grows, and human interest grows. They must go on growing and keeping pace with the rest of the world, or you put the hand of paralysis upon the people who must have those accommodations or die. They will have to be provided.

Great Supplies of New Money are Needed.

How is this increased transportation facility, this constant growth in transportation facility, to be provided? Is there any one who dreams that it can be supplied out of earnings? Is there any man of affairs anywhere who believes that you can continue to build the needed transportation facilities out of earnings? If so, he needs to open his eyes, because that is not even a remote possibility. It is impossible to build, to renew, to extend, to amplify and to increase the transportation facilities of this country, without the constant input of new money.

It is necessary, therefore, for the American people, in answer to their supreme needs for efficient, adequate, and constantly growing facilities, that there shall be a guaranteed means by which the provision of the facilities may be insured. There must be an assurance, not in the interest of the railroads, but in the interest of the public, there must be the assurance of a constant supply of new money in order to increase, as the public needs require, the transportation facilities of the country.

Railroad Credit is of Paramount Public Interest.

Now, how is that new money to be provided? Manifestly if these systems of railroads are to remain in private hands and if they are to look to private individuals to supply these means, there must be established such a credit on the part of the transportation facilities of the country as will attract the private investor.

I pause for a moment to ask you gentlemen to consider whether such a credit is simply the private affair of the railroads? Is it a matter in which alone the present owners of the railroads are interested? Is it a matter in which the present owners of the railroads are interested to anything like the extent that the public are interested? Of course, it is to the interest of the private owner that his property should flourish, but at last, when confined within its present limits, he can do something with this proposition, or in the final event the Government can take it over and pay him for it. But the public requires that there shall be an adequate credit, because the public requires that there shall be adequate growing transportation facilities. If the credit of the railroads breaks down or is insufficient, then the public is denied the opportunity of growth and expansion and of an avenue for the current of its commercial business. So the question of railroad credits is not a private interest. It is a public interest. It is a necessity of the public.

If Credit is Not Established, then Government Ownership Must Follow.

If it fails to exist, there are but two things to happen. One is that the country will be blighted by an insufficient supply of railroad facilities, and the other is that the Government must take them over and supply the credit itself, and if the Government ever does take them over, and if the Government ever does become an operator of these

railroads, it will be because this question of railroad credit is so absolutely controlling in the public interest that the public must take them over in order to supply the credit.

No more convincing argument can be made to an intelligent mind that railroad credit is a matter of great controlling public interest than the fact that if ever there comes a system of Government ownership, it must come for the purpose of supplying the credit which private owners cannot supply to it.

Bonds vs. Stock.

Now, let us look at this question of railroad credit and its present condition. Is it on a safe basis, so far as the public is concerned? Leave out, I pray you again, any consideration of private interest. Is the railroad credit of the country on a sufficiently sound basis to satisfy the public needs? Let us look at the facts. I suppose that there is not one of you who has not come to realize, in the conduct of your personal affairs and in your observation of commercial conditions, that business cannot safely be conducted if dependent entirely upon borrowed money. The man who goes into business and borrows all his capital is not considered a preferred risk in the commercial world. The man who gets all he has by mortgaging his property and putting on fixed charges is going to have less and less credit as his mortgages increase and as his fixed charges grow, and as he comes closer and closer to the time when some reversal in business may prevent the payment of his interest. That rule is as applicable to a railroad as it is to an individual. A railroad can no more go on exhausting all its assets by mortgages and loading up all its operations with the application of fixed charges than can an individual. There comes a point in railroad credit, as in individual credit, where the line of safety is found between the input of capital which can be borrowed and the input of capital which should be made by the owner of the property, and be evidenced by stock with-

out fixed charges. The accumulation of fixed charges, the necessity to pay them, whether the earnings are sufficient or not, constitutes a charge, if this line is exceeded, which may mean, in the end, default and bankruptcy and failure.

Line of Safety Between Capital Borrowed and Capital Owned.

It is important, then, for us to inquire where that line of safety is, and whether it has been exceeded in American railways. We shall attempt to develop that by expert evidence before you in the course of these hearings, to show where the line of safety is considered to be by the expert financiers of the world. But there is that line of safety, and the question which you gentlemen will be interested in considering is whether that line of safety has been exceeded or is in danger of being exceeded, and whether thereby the financial structure of the American railroads is now menaced.

I believe you will find that a great many of these economists and financiers will say that that line of safety is 50 and 50. Some of them, doubtless, will put the percentage of borrowed money at a higher figure, but none has come to my attention, no contention has come to me that the borrowed money ought to be higher than 60 per cent, and that at least 40 per cent should be contributed by the owner. That will be a matter of investigation, of expert investigation before this committee, as to where that line of safety is.

But taking it for the purpose of my illustration at 60 and 40, we have the history of railroad financing in this country within the last 16 years on this point as follows:

Great Increase in Indebtedness.

In the year 1900 the bonded indebtedness, the indebtedness that was accompanied by fixed charges, constituted only 49.78 per cent of the entire capitalization, and on that capitalization, in that stock, were the bonus stocks, which

were at one time resorted to as a method of American financing. In the year 1914 the percentage had grown to 61.80 per cent, and the information I have, but I state this subject to verification, is that in 1916 it is 65 per cent.

Gentlemen, is there nothing in that statement to make us pause and inquire where we are tending? Is there nothing there to make us pause and study the question of whether or not existing systems of regulation sufficiently encourage investment to induce the investors to buy the stock of railroads and thus establish the proper equilibrium? If we do not, where are we tending? Where will that growing percentage lead us? Is there any man brave enough to advocate the proposition that the railroads must hereafter be financed entirely by fixed charges? Or must not the intelligent statesmen and economists of the day say that there is this line of safety; that under the evidence you have you will find that it has already been exceeded? But whether it is exceeded or not the tendency is so rapid, the increase of fixed charges in its relationship to the amount of stock is going to be so great that you must stop and look at this tremendous danger that is appearing upon the horizon.

Conditions Necessary for Financing Through Stock.

We shall attempt to show to you again that in order for a railroad to finance itself by stock that there must be reliable earnings of the railroad sufficient to make the investors certain of a return of 6 per cent, with 3 per cent surplus. That is a very small estimate, as will appear from the evidence of these experts, which will be presented to you. That in order to put stock out at par, the earnings of the company which wants to issue the stock must be at least 6 per cent in the way of dividends and 3 per cent in the way of surplus to protect the investors.

What is the condition of American railroads under that test today? By this test 39 railroads, having a mileage of

47,363 miles could probably be financed by the issue of stock at par. Under this test 137 railroads, having a mileage of 185,219 miles could not be financed by the issue of stock at par.

All the people of this country do not come from the territory served by rich railroads. Some of us come from a territory where the railroads are not in this fine financial condition. We need our railroads as much as the rich sections of the country need theirs, and when we see that 185,000 miles of railroad in this country cannot respond to that test of financing themselves against the 47,000 that can, I ask you whether or not a condition is not presented to the American people which would make them pause and ask where we are going?

Let us consider some of the other conditions which are at present affecting American railroad credit, and that we must now confront in respect to this matter of railroad credit.

Investment Conditions in Various Sections of the Country.

What is the territory that is furnishing money to railroads? Is it the whole world? Is it all of the United States? Take my own territory of the South, through the income tax returns we have been recently able to trace the ownership of a block of \$100,000,000 of bonds of a railroad company running through the vital points of the South, and of that block of \$100,000,000, 3½ per cent are held in the South.

I have recently asked an intelligent associate of mine to go through the South and talk with our people with respect to the investment in railroad securities, and he comes back to me with the report, which we shall verify by the presence of bankers from that section upon this witness stand, that there is comparatively little demand for investments in rail-

roads in the South; that there are other investments which are more attractive to those people.

The same is true in a very large extent of the western part of the country. There is a great insurance company in one of the western States, the investments of which in loans on farms amounted to \$183,000,000 as against \$75,000,000 in railroad securities, and they have stopped investing in railroad securities. They have never made a loss on the farm loans, while the depreciation in railroad securities has amounted to such a substantial figure that they have gone out of the business. We shall have on the stand here to tell you of the question of railroad credit in the West, witnesses who can verify this statement.

So we have two great sections of this country that practically withhold their credit from the railroad investors. Of course not all of it, but to a most substantial extent.

Now to what sections have we been able to apply? We have been able to apply to the eastern section of the country and to Europe. But the war in Europe has made of those people borrowers instead of lenders. They no longer are taking securities of American railroads, but they are sending them back and disposing of them on the markets of America. Not only is that the case today, but when this war is over, Europe will still be a borrower in order to build up its waste places and will not be a substantial source of supply of funds to American railways. So that we are reduced to the small financial section of this country, which is perhaps best described by the "East," and when we inquire into the condition of railroad credit in the East, we find that representative bankers in such cities as Boston are advising their clients, when they come and ask them about investments, not to go into railroads; and more than that, we are finding that the clients, when they come and want an investment, and a railroad security is suggested, they decline to take it. Now, that is a tendency which we cannot ignore.

Prices of Gilt-edged Bonds are No Criterion of Credit.

Gentlemen, I wish you to bear in mind that I am not contending here that gilt-edge railroad securities, constituting first or prior liens, have no market, because they have, and they have a pretty good one. Outstanding mortgages of high order have a very good standing in some restricted markets of the country, and can be sold under advantageous terms; but are you interested in that? Are you interested in how outstanding first mortgages sell, except in an indirect way? Your problem is not that; your problem is whether or not the railroads of the country have unencumbered assets, have sufficient margins of equity to enable them to use them as a basis of getting new money into these enterprises. That is your problem; that is the railroads' problem: what is there left, you will ask, to bring new money into these railroad enterprises, in order that they may perform acceptably their public function, and may adequately provide for the growing commerce of this country? That is your problem; that is the national problem; that is the public problem. What can we do? What have we left that will enable these railroad companies to meet the thing that is essential in the interests of the public, to raise the amount of money that will supply the facilities which the public needs absolutely demand? Every security that is now out upon the markets might be more desirable than any other class of securities—every one of them might be in the highest demand, but they bring no money. What they have brought has already come. The practical problem is to get the new money that these facilities require, and we have got to look at the assets of these companies, and their earning capacity, in order to see whether what is left furnishes a guarantee of the future of these American railroads. So let us not delude ourselves with the idea that we can find railroad credit reflected upon the quotations of the stock exchanges in respect to bonds already in the hands of the public. That gives no picture of the kind of credit

that you are inquiring into, and that your public is interested in. That may have an indirect bearing as indicating that if those securities are worth so much, perhaps there are others to come behind that will still be saleable; but, at last, your inquiry is as to the condition of what is now available to offer the public when you ask his investment, and whether it is sufficiently attractive to get it. And you must realize that you are offering now junior liens on all these railroads, or you are offering stock which is without a lien. You see the condition of the stock; you see the condition of disproportionate issue of bonds, as compared with stock, and you see—I hope you see—that there is a real problem for the statesmanship of this country to consider in the question of whether or not existing conditions, whatever may be their cause, are such as to give a guarantee to the American people that new money will be forthcoming, as they need new facilities, and that there is a practical assurance that these new facilities will be provided.

Superior Attraction of Other Securities.

You will, likewise, have your attention called to what are considered the superior attractions of other classes of securities. You will be told of why it is that investments are going in other directions. You will be told about the more attractive earning capacity of industrials. You will be told about the growing favor in municipal securities, your attention will be directed to a vast area or avenue of investment newly created by an act of Congress, where the farm loan securities, practically endorsed by the Government—not in the way of financial obligation, but endorsed by Government approval—will come into the field as a great competitor of other investments; that those securities are tax free, and, as told to us by one of the bankers of Memphis, Tenn., that they will hereafter furnish a tremendous source of competition to any other class of investment, especially investment in railroads.

Your attention is invited, and will continually be invited during this hearing, to this, as a cause for the decline in railroad credit, and that is that under our governmental policy the amount of the revenues of the carriers is not within the control of the owner. I am careful here to say that I realize that the amount of those revenues cannot be, and should not be, in the hands or the control of the owner, free from governmental regulation, but when I come to discuss that part of the subject, I shall discuss what the regulation ought to be; not that there should be freedom from regulation, or absence of regulation, but the character of the regulation, so as to increase public confidence.

Power of Labor to Dictate.

We cannot in this connection lose sight of the fact that the credit of the railroads is also affected by the power of labor to dictate its own wages, and by the consequent withdrawal from the control of the owner of the power to fix the level of his expenses, and we are subject, as all are subject, to the increased cost of living—the difference between us and most enterprises being that we cannot increase, as we think proper, the amount of our revenues. We are like the Government clerk up here, with whom you gentlemen have to deal, whose income is limited, but whose market bills increase.

Business, Not Political, Principles Should be Applied.

And then there is another consideration, gentlemen, which affects railroad credit, which in the calm and dispassionate atmosphere of this inquiry, I hope, will be recognized and will be given due consideration: Railroads are, at least, a business enterprise; they must not be subjected, if they are to survive, to political management. We are just as dependent on the application of business principles to the business which we are entrusted with the obligation to make

successful as any other line of business, and we cannot be subjected safely to political management any more than any other business can be safely subjected to political management. .

Now, I have adverted briefly, gentlemen, to some of the causes which are affecting adversely railroad credit. Is there nothing in that catalogue to arrest your attention? Is there nothing in the conditions which I have described to make you pause and say, "Are the interests of the public sufficiently safeguarded under conditions such as these? Is there an adequate assurance in the conditions which now exist that, through private means, the railroad facilities of the country will be at all times kept adequate to the country's needs?"

Investor Must be Attracted—He Cannot be Coerced.

Let me ask you, for one moment, to put yourselves in the position of the investor. You, as an investor, cannot be coerced; you must be attracted. There is a fundamental part of the problem of railroad management and of railroad regulation. As long as these instrumentalities are in private hands you cannot coerce, but you must attract, investors. Now, an investor who means to invest comes and looks upon the field. What does he see?

He sees, in the first place, that the subject in which he is asked to make his investment is absolutely beyond his own control in respect to the revenues which it shall produce; that they are controlled by governmental authority, and they are not only controlled by governmental authority, but they are controlled by a governmental authority which is irresponsible for the results, and which is so diversified that it cannot be co-ordinated into one consistent policy of regulation. He finds not only that the revenues are limited by the power of government, but limited not by the power of a single government. He finds that the level of his revenues is not fixed by a standard which is consistent and

which looks to, appreciates, and is responsible to the whole people, but by a diversified, unco-ordinated, and uncontrolled diversity of governmental authority—that while the standard of one State and the standard of another State—I mean of the National Government—may be high enough to guarantee the continued efficiency and sufficiency of transportation facilities, and from time to time to attract new capital to make his own input useful and valuable, that he can have no such standard as that applied, but that he must go not only to one source of regulation, to one standard of what the public requires, to one standard of what can be permitted in the way of the prosperity of the enterprise, but to forty-nine.

Is there anything inviting in that to the investor? Is there anything to make him feel that “that is the place for my money?”

Income and Outgo are Subject to 49 Public Authorities.

Again, we find not only can one government add to the expense account, but the 49 governments can add to the expense account. Can they add to it with a limitation of the same principles or the limitation of the same standards, or can they add to it according to the individual and uncontrolled conception within the lines of confiscation of each individual governmental authority? Here this investor has the question of the amount of his revenues controlled so that he cannot say what they shall be, and no enterprise of his can control them, but they are controlled by a governmental authority, and added to that are the differing policies of 49 authorities, all of which have the power of affecting his revenues, and when he comes to the expense account he finds that that is not in the hands of a single responsible authority, responsible to the whole people, and to a comprehensive and complete view of the needs of commerce and of the instrumentalities of commerce, but that that, too, is subject to the unco-ordinated, diversified, and unrestricted—except

as constitutional limitations restrict it—exercise of the power of 49 different agencies.

Now, Mr. Investor, how do you like that situation? Is there anything in that to make you particularly keen to part with your hard-earned money and put it into that enterprise? Is there or is there not something there for the government to consider and for the government to correct, if you are going to continue to rely upon the voluntary action of investors free to come in or free to go out?

Investor Sees a System of Repression.

What else does this investor see when he comes to consider now whether it is to his interest to put his money into this enterprise. He sees a system of regulation born of the passionate resentment in the public mind against abuses and containing only the principles of correction and punishment under the principles of repression, no principle of lifting up and building. He finds, therefore, that not only is he invited to come into an enterprise where he can control neither his revenues nor his expenses, but he comes to make his investment subject to a system which contains only the principles of repression and correction, and which has in it no recognition of the necessity for him to be encouraged and protected.

Is there anything in that that you, as representing the public, can rely upon to secure from private individuals the new money that is needed to build up and to make stable these great fundamental instrumentalities of the public welfare? Suppose he looks a little further, this investor, examining into the merits of the thing in which he is asked to make an investment, and finds that there has been a gross advance in 16 years of 16 per cent in the proportion of fixed charges put upon that property to which he must come in subject, and where the margin for his security, be it lien or be it stock—the margin on which he must rely for his reimbursement and for the safety of his investment—has been

reduced from over 50 per cent in 1900 to about 35 per cent now. Do you think that that constitutes an element of real attraction to an investor? This man that you must attract, this man that you cannot coerce, you are inviting into a banquet room where the fare will be, in his mind, only the fare of starvation instead of the fare of plenty, and you are asking him permanently to identify himself with an enterprise that is made subject to these conditions in respect to the exhaustion of equities and to the gradual progress toward the entire exhaustion of asset value. Such a man—this investor—will not be contented to look only in the direction to which you invite his attention. He is not going to see only your railroad investment. He is at liberty to look at other classes of investment. He is at liberty to measure their attractions, and he is at liberty to choose between them. How will he choose between the investment which is subject to severe and restrictive governmental regulation on the one hand, and which he is free to enjoy, and the operation of the forces of economic development on the other? How will he select your railroad investment when he sees the standard of your earnings vastly inferior to the standard of the earnings in other industrial pursuits from agriculture, or from agriculture down?

I say that in deference to my friend from Georgia.

MR. ADAMSON: That is correct.

MR. THOM: How will he select, when he has the whole field of clear and unencumbered assets on the one hand as a security, and he sees the margin of equity in the railroad world reduced to 35 per cent, against over 50 per cent 16 years ago? And when you invite this gentleman, with his money to invest, to consider a railroad investment, what will be the impression on him when he is free, on the one hand, to invest in a line of business which is governed only by business considerations, which is subject only to the limitations of honesty, which puts no restriction upon genius or enterprise? That, on the one hand, and a system of trans-

portation which is not controlled by simple business considerations but is subject to the fluctuating views of political parties. How will he select?

System of Regulation Must Offer Attractions to Investor.

Some of these things that I have alluded to are inseparable from the railroad industry. The principle of governmental regulation is inseparable from it. We must reckon with that. We must take that as our starting point; but, after we have taken it, that does not end the question. It comes back, then, to the system and permanency and provisions of regulation, that they may be as wise as they can be made. in order to safeguard the public against abuse and at the same time offer adequate attractions to the investor, to continue the supply of facilities. We are not here to discuss the freedom of this industry from regulation. That is universally accepted as a permanent and enduring part of American policy, and I, for one, concur in it, not only as a fixed policy, but I am a disciple of its wisdom. I believe it ought to be, so that when I raise my voice here it is not for the purpose of attacking the principle or the policy of regulation, but it is for the purpose of trying, as far as my efforts can contribute to it, to see that the system of regulation is made as wise and as helpful as it can be made for the preservation of this great and essential industry.

Such System Must be Free from Political Considerations.

I do believe that a means must be found of creating an authority of regulation that shall be as free as possible from political consideration. I realize that it is, perhaps, a Utopian dream to think that that can be done entirely, but I do think that that is the point to which the efforts of statesmanship should be directed, to find a method of applying governmental regulation to an industry, which shall be safeguarded as far as possible from political consideration

and political influence. We know that at the present time—I say this in passing, merely as an illustration of what I am meaning in this part of my remarks—we know that a railroad today, under the instructions of the Interstate Commerce Commission, may refuse to pay a claim to some important man at some cross-roads, that it may make by that obedience to the instructions of the Interstate Commerce Commission, a political enemy of a man to whom we do not pay the claim, and that he may have strength enough to influence the election of some man that will feature his political life by an attack upon the railroad interests. We can not survive that, any more than any other business can survive. The decree of the American people has gone forth that railroads shall stay out of politics, and the railroads with which I am acquainted do stay out of politics. That same policy which issues that righteous decree to the railroads, should see to it that the other side, that side that wants to attack the railroads, stays out of politics, too. We plead before you gentlemen for a non-political body, business system of regulation, which shall give every guarantee that it is possible for your wisdom to invent, that the business questions on which your welfare hinges and by your, I mean the public welfare—are dependent, shall be decided on principles of business righteousness and not of political expediency. Your railroad business can not long survive, if it is made a football of politics, and the more it is made so, the more dangerous it is; the less it is made so, the more you attract the man that expects business conditions to surround his investment.

I have tried with such suggestiveness and force as I could command to bring to your minds an appreciation of the fact that there is a condition of serious depreciation in railroad credits. I have tried to show to you that that is a matter that does not primarily concern the railroad owners, to the extent it concerns the general public. I think we

should now go further and inquire into the causes of this decline in railroad credits. I have hinted at that in the course of what I have said, but perhaps it will be useful to catalogue them again, in order that we may see whether there is anything in them that is impossible for national politics to remedy.

Mr. Chairman, I have spoken two hours and a half now. It is a considerable effort to speak two hours and a half. I will not be able to finish today. I would like very much, if I could, before going into this subject, which is a very large one, if I can come tomorrow morning and continue.

Mr. ADAMSON: Mr. Chairman, I would suggest that we utilize the time to go into executive session for a few minutes.

The motion was agreed to.

FRIDAY, November 24, 1916.

The Joint Committee met at 10:30 o'clock a. m., pursuant to adjournment, Senator Francis G. Newlands (chairman) presiding, Hon. William C. Adamson, vice-chairman.

Present: Senators Robinson, Underwood, Cummins, and Brandegee; and Representatives Cullop, Esch, and Hamilton.

The CHAIRMAN: The committee will come to order. Mr. Thom, you may proceed.

**No Capital Now Available from Those Who Risk Much that
They May Make Large Gains.**

Mr. THOM: Mr. Chairman and gentlemen of the committee, in speaking yesterday of the disappearing sources for the supply of needed funds for railroad improvement, I omitted one of the sources which seems to me to be of great significance and consequence to the public.

The railroads of this country have been created by the spirit of adventure of the American people. They have been willing to go into enterprises involving an unknown future and great risk in the hope of large returns. There is no man acquainted with public affairs, or with the history of the creation of the transportation facilities of this country, who does not appreciate that without the spirit to which I have alluded there would have been no such transportation system as exists in America today. The spirit of the man who was willing to adventure his means in the hope of great financial return is what has accomplished the creation of the American system of railroads.

Now, that source has, of course, been eliminated. There can be no system of strict governmental regulation which would leave any room for the man who is the adventurer or speculator, if you please, in the subject-matter that is thus recognized. While we all recognize that that situation is

one that has necessarily come, in dealing with the future and in laying our plans for the preservation and the growth of this system, we must not shut our eyes to the fact that that great body of adventurers, of capitalists, which was controlled by the spirit of adventure, has disappeared as a source of supply to the increase of railroad facilities. So that we are reduced now to the conservative investor when we want to get money. In order to attract him there must be offered to him, in the place of risk and large returns, stability and certainty for his investment. Therefore in your outlook, in your constructive scheme for the future, in your purpose to preserve an adequacy of railroad facilities for the growing commerce of this country, you cannot shut your eyes to the fact of the disappearing and exhausted sources of supply of this capital, but you must address yourselves as practical men to the accommodation of what you do to the actual possibilities of the situation with which you are dealing.

Amount of New Capital Required to Meet Financial Needs During Next Ten Years.

Gentlemen, may I for a moment try to interest you in the question of what the financial needs of the railroads are likely to be during the next ten or twelve years? Of course we have no lamp to light our feet as we tread along this pathway, except the lamp of experience. We can only study what has been done, what the tendencies are, what the growth of commerce is expected to be, and from that attempt to adduce what will be necessary in the way of transportation facilities to accommodate the commerce which may reasonably be expected.

We have had that subject studied, and in due time the exact methods of that study, the way it was carried on, the figures which have been deduced from it will be presented for your consideration. I will now simply give you the method and state conclusions.

In our effort to ascertain what are the reasonable needs

of the future, we have studied the growth of population, industries, and commerce during the past twenty or more years, and the growth and development of railway traffic and of facilities and equipment during the same period. We have tried to show what the percentage of increase year by year has been during that period; how the property has grown; how the traffic has grown, and how the railroad facilities have grown to take care of it. The result is this, from the growth of population, industries, and commerce during this period this has been found:

First, that the wealth of this country has increased at the rate of eight to nine per cent per year, and that the same ratio of increase has held good in the demand for transportation.

Second, that the forces that have operated in this growth and development in the past apparently continue still in full operation, and may reasonably be expected so to continue for the next ten or fifteen years.

Third, that the investment in railway facilities, in order to meet the enlarged requirements of the future, because of this continued growth, and in order to fulfill the duties and obligations imposed upon the railways by the public, must, therefore, also proceed at a corresponding annual rate of increase.

We take, then, eight per cent as the result of these figures, to indicate the annual growth that must be provided for in railroad facilities of all sorts, in order to keep up with the eight per cent of increase in the business of the country, and the result of that is that during the next ten years there will be needed approximately twelve hundred and fifty millions of dollars a year, in order not to constrict the business and productive energies of the country and in order to supply them reasonably with the facilities which this growing business will require. Now, those figures, of course, are not accurate; those figures indicate a mere attempt to forecast within some sort of reasonable limit the needs of the railroads and

the public interest annually during the next ten years. Those figures apply only to the amount that will be required to increase your facilities; they do not contemplate the amount that will be required to refund your maturing debt. From the best information that we can obtain, there will be required to refund maturing debts during that time a sum approximating two hundred and fifty millions of dollars a year; so that the requirements of the railroads for new money during the period to which I allude are estimated by us to be fifteen hundred millions of dollars a year.

Now, as I say, those figures are an attempt at approximation; it is the best estimate that we have been able to give. They are larger than the amounts which have been expended during the last few years, which have amounted to six or seven hundred millions of dollars a year; but they are based upon the creation of facilities such as will accommodate commerce, and not on the policy of skimping and restraining commerce, and not having facilities adequate to its accommodation. These figures, therefore, will illustrate to you the problem with which you will be confronted in creating a constructive system of railroad regulation in providing for the future needs of the public which you represent. Whether somewhat greater or somewhat less, they are figures of a magnitude sufficiently great to arrest the attention of men charged with your responsibility.

Time to Make a New Appraisalment of Conditions.

Is it not fair to ask of a system which limits revenue, but does not limit expenses, where this money is to come from? Is it not fair to ask that in any constructive measure which is favored by the Congress of the United States this essential need of the people shall not be overlooked, and that some method shall be provided which will reasonably assure the necessary input of capital to bring these and to keep these instrumentalities of commerce up to the requirements of the public needs? Can it for a moment be contended that exist-

ing systems have that effect? I have but to ask you to recall the situation that confronts the American investor, as I attempted to describe it to you yesterday, to see that there are no such inducements of safety and certainty and of a friendly attitude of government towards this great essential of public welfare, as to make it certain that that investor will put his means in this restricted field of financial return. In view of that, has not the time come, in the language of the President, to take a new appraisalment of the conditions that surround those properties, in order to see whether or not your present system of regulation contains those principles of encouragement and helpfulness and assurance which will be their support in the minds that must, at last, determine the question—that is, in the minds of the great investing public? Of course, we all must recognize that there is an inherent difficulty in the way—a difficulty which we must all reckon with—and that is the difficulty that the revenues of the carriers must be regulated by some governmental authority; that there must be some limit put by governmental authority upon them. That, in itself, is a limitation of a serious character, and to be considered from an economic standpoint when we come to deal with this subject. That, however, is a difficulty which cannot be removed. We must deal with that as a fact. It is the outcome of the important relationship which these carriers bear to the public welfare; it is the outcome of the consequent system of regulation, which must now be regarded as a permanent part of American governmental policy. But we are entitled to examine the question; whether or not the system of regulation which has the effect of limiting these revenues is of a character that presents as few difficulties as possible? We have a right to consider, in examining this accepted system of regulation, whether there is anything in it which unnecessarily deters public confidence from this investment, which unnecessarily complicates the situation, and which unnecessarily builds up difficulties in its way? If you gentlemen can, for one

moment, put yourselves in the position of the man who wants to choose his investment, and who is willing to accept a simple and an orderly, but at the same time an efficient system of regulation, I think you will appreciate that the thing that you will demand is that the system of regulation shall be as comprehensive and as wise, and as little subject to local and fluctuation influences as it is possible to make it. I do not think that you would go about seeking an investment which may be limited not only by one authority, but by many authorities. You would want a system of regulation as little influenced by politics as you could get it; you would want a system of regulation as little controlled by selfish and narrow interests as you could get it; you would want a system of regulation which could take a large and comprehensive view of national needs, and take the broad outlook of American commerce, which appreciates that it is continent-wide, within its own limits, and that means must be created to allow it to reach the farthest markets of the earth. If you accepted, as you must do, that there must be regulation, you would demand that that should be as simple and as wise and as broad and as far-seeing as it could be made. Would you consider it as bearable to have so many different governmental agencies, with varying policies, with varying conceptions of the needs of commerce, all able to put their own special limitation upon what your investment might be allowed to earn, all able to create special conditions of expense, to which your investment must be made subject?

Views of a Prominent Business Man.

Now, gentlemen, I hold in my hand a letter which was not written to me, but was written by an important business man whose consent to read it I have not got and therefore I shall not mention his name, but which I have been permitted to see, and the important part of this letter I shall ask your indulgence while I read it to you, because it ex-

presses the standpoint of the disinterested business man as he looks upon this transportation problem. It was written during the current month. It was written in connection with a convention of business men held in the last week or two in the city of Baltimore. It was written to express his view of what that business association should do in regard to this matter of transportation.

"I wish to thank you for this invitation"—he refers to the invitation to attend the meeting—"and to express my regret at not being able to attend the conference, as I have no doubt a discussion will prove of interest, as the matters to be considered are very important.

"While I recognize that there are still many evils to be corrected, I am beginning to wonder whether we are not approaching the time when we are in danger of going too far in our endeavor to exercise control over our railroads. Is it not time to take cognizance of the fact that the Interstate Commerce Commission is not the only power exercising control? Most of the gentlemen gather at Baltimore will be business men. How many of them would want to start in business if the rates of wages and the conditions of employment were so controlled that the cost of their output was largely a matter outside of their control, and if at the same time the prices at which they could sell their commodities was a matter in which they had little or no voice? How many of them do you think would feel very much interested and in case they could not get out, how many of them do you think would feel very much interested in improving or extending its facilities? Certainly under such conditions no one not already in business would care to start any new enterprise.

"To what extent is the present lamentable breakdown in our transportation facilities due to the underlying causes above referred to? I don't suppose anybody knows very definitely to what extent that may be the case, but isn't there probability enough of there being an intimate relation between the present inadequate condition of the equipment of our rail-

roads, and the fact that the officers of our railroads are no longer in control of our transportation facilities, to any very marked extent, to give us pause and perhaps look at this problem from a somewhat different standpoint. That the railroads themselves are largely to blame for the necessity of exercising some measure of control cannot be denied, but as all movements in public sentiment and in reform swing too far and have to recede, are we not rapidly approaching the time when the swing of the pendulum in this movement should be checked?

"It may throw some light on the present status of these problems if we very briefly review the early history of our railroad building. Very few of our railroads were profitable investments when they were first constructed. The resources of the country through which they passed were undeveloped, the revenues in most cases were insufficient to pay for the upkeep of the roads, and equipment, and provide interest for the bonds, and most of them went through bankruptcy and had long periods of lean years before they ultimately reached the point where they could pay even five per cent or six per cent on what would have been a fair valuation of their assets. Of course the investors had hopes of very handsome returns, or they never would have built the roads. To be sure, the public had just grounds for grievance against some of them because of the stock jobbing schemes that were employed, and because of the many of the methods of discrimination that were followed, but just the same had it been known in advance that no larger returns would ever be made, and that ultimately, even if they could be made, would not be permitted because of government regulation, most of our railroads would never have been built by private enterprise. Could any group of men today be induced to build a trunk-line railroad for the purpose of competing with those already in existence, with all the risks of losing their money, knowing that from the beginning, at best they would have a long period of unprofitable operation, until the natural resources along their line should be developed, and knowing from the beginning that in

no event would they be permitted to earn more than a mere five or six per cent on their investment?

"With a knowledge of these facts before us, does anyone suppose that if the conditions now imposed had already existed our railroads would ever have been built by private enterprise? Is it not therefore matter of great good fortune to the country that our railroads were built before these restrictive conditions were imposed?

"If the conclusions above reached are measurably correct do they not also apply, although somewhat in a lesser degree, to the problems involved in increasing the facilities and equipment to meet the ever increasing necessities of the public? How far is the present shortage of cars and equipment due to this condition? If our railroads are deprived of the opportunities to make money enough to enable them to provide additional trackage and equipment sufficient to meet the growing demands of our country, how are these necessities to be provided for and how is our country to continue its development? We all decry government ownership, but are we not in danger of creating conditions that will force it upon ourselves? We know something of how the red-tape, politics, inefficiency, and increased cost of operation resulting from government ownership would ultimately affect rates, and the service rendered, but even more serious would be the fact that government owned railroads would always lag behind necessity. Needs for additional trackage, terminals, and equipment, would never be anticipated. We all know that it is hard enough, and many times impossible, to get Congress to do a thing even after the necessity for it had long been apparent, hence our railroads would never be ready for a great business movement when it came. The ills we now have are as nothing compared with those we would have under government ownership. It is time to be careful."

Effect of Dual System of Regulation.

Now, gentlemen, this brings me to consider, in the effort which I am advocating before you, the simplification of the system of regulation—this brings me to consider on its merits the dual system of regulation, both by the State and by the National Governments. This question should be considered from two standpoints, one from the standpoint of the discouragement to the investor which this dual system of regulation creates, and the other from the standpoint of the effect of this dual system of regulation by one State upon the interests of another State, and upon interstate commerce.

A Narrow State Policy Which Escapes Confiscation Cannot be Controlled.

I have spoken to you at length in regard to the effect upon the credit of the carriers. I have called your attention to the fact that the investor himself is repelled when he comes to consider that his investment is made subject not only to one regulating authority, but to many regulating authorities. I have called your attention to the fact that one State may have a narrow policy, that it may consider that its system of rates should just escape the line of confiscation, and that it should make no contribution whatever to a high efficiency standard of transportation facilities. We all know that there are such States; we all know that the courts have been full of cases where State-made systems of rates have been attacked because the railroads regarded that they did not escape the line of confiscation, but that they were actually confiscatory in their character, and whether those cases have succeeded or not it is only necessary in order that the State might win them that the line of confiscation was escaped, or that there was no available proof that the line of confiscation had been kept below.

We all recognize the fact that the cases which have charged confiscation in this country have been almost entirely cases in regard to State-made systems of rates and seldom in regard to nation-made systems of rates. We all know, therefore, that it is within the power of the States, unrestricted by any constitutional limitation to cut the level of its rates down just so that it will escape the condemnation of the Fourteenth Amendment.

Suppose there are States that do that? Suppose that those States can control an average of 15 per cent of the traffic of the railroads, for interstate traffic, generally speaking, in this country, is about 85 per cent of the whole, and State traffic is about 15 per cent of the whole. Now, suppose it is within the power of a State simply to cut down the earnings of the railroads, that fifteen per cent, to the line of confiscation, and just to escape it? What view will the investor in these railroads take of the existence and sometimes of the exercise of such a power as that? Is that power an inducement to the input of this new capital which I have attempted to show you is essential in the interest of American commerce? Suppose a State might go further and adopt a policy, as some States have adopted it, that States' markets are for State people, and the theory of interstate commerce across the border is impeded and sometimes prevented by a scale of rates which makes dealings across the border impossible?

Would that impediment to the free flow of commerce, created by the local views and the local conditions of men who can control measurably those questions, be an inducement to the investor to put his money in a business subject to such conditions? But I have discussed that feature of the situation sufficiently.

Commerce is Not a Neighborhood Affair—It is Nation- and World-wide.

I beg you to let your minds revert back to what I had the honor of saying to you on yesterday, in regard to the attitude of the investor, and let me come at once to the consideration of how the policy of one State can adversely affect the policy of another State; of how inherently there is in this situation a power inconsistent with any comprehensive and sound view of what commerce is. Commerce has ceased to be a neighborhood affair. Men no longer deal simply with their neighbors, but steam and electricity have done their work, and the markets of the world have been brought to the doors of the business men of the country. Their field of enterprise is no longer a restricted and neighborhood field, but the productive and commercial energies of the people know no limits, except the limits of the civilized globe. In order to deal with that question, therefore, we have got to get a horizontal view of what commerce is and what commerce demands. We have got to get away from any narrow conception of it, but appreciate in a comprehensive way all its needs and all its interests. The man who now deals simply with his neighbor has fettered himself with a condition of slavery—of commercial slavery—which is out of keeping with the spirit of freedom which pervades the earth in regard to what commerce is. In our little communities we see our neighbors producing the food-stuffs which are to feed the armies of Europe. In our little communities we see our neighbors producing the food-stuffs which are to supply the great markets of America. Men will not be content with their own market towns as a limitation upon their commercial possibilities. In obedience to that tendency, great lines of railroads have come into existence, not as a matter of financial scheming, but in obedience to the operation of a commercial law which is all-controlling, and that is, that the instrumentality of

commerce must accommodate itself to the needs of commerce, and so we see the great lines of railroads in this country which are serving the people, and are serving them according to their needs, take no note of State lines, but they pass on from the vast fields of production to the great markets of America, and to the great ports of America. They are carrying commerce where commerce wants to go. They are not hauling within the confines of States where commerce does not want to go. They are responding to an economic condition which they could not create, and to whose behests they must yield an unquestioning obedience. Should our system of regulation recognize that fact or refuse to recognize it?

Laws Must be Adjusted to Economic Needs.

Any system of regulation of an economic question which throws itself athwart the path of economic progress is destined ultimately to failure. There may be checks, there may be obstacles, there may be artificial and unnatural conditions sought to be imposed, but at last, gentlemen, the logical operation of economic laws will prevail over human-made laws and human intelligence, sooner or later, will begin to recognize it, and when it is recognized, the adjustment that is made will be by the laws to the economic conditions, for it is impossible to adjust economic conditions to the laws.

Now these economic conditions, in which your constituents want to deal with all the people of the earth, are in operation. That economic need may be checked, but it cannot be destroyed. The thing for statesmanship to inquire of is whether the time has come for a better adjustment of statutory laws, to recognize economic conditions. What value have the lines of the States from the standpoint of interstate and foreign commerce? They may be adhered to from political preference. There may be an indisposition to disregard them, from inherited or political consideration,

but there is no justification for that from a commercial standpoint, and the question before you is whether you will bind the commerce of America by political considerations, or whether you will study it in its commercial needs and in its economic aspects, and will adjust your laws to the actual conditions which do apply to and control it.

Instances of the Effect of State Regulation upon Other States.

I ask your attention to the effect of State regulation upon other States. We shall attempt to develop that in the evidence which shall be adduced before you, but I will take the liberty of referring to a few conditions in respect to it, which are known of all men, and which may well illustrate the purpose I have in mind. In the first place, I call your attention to the fact that between the Potomac and the Mississippi rivers there is not a State that does not make the State rates, and the State commerce in no two of the States moves on the same terms, although the Government makes them all. Now, is not that a startling proposition? Is not that an illustration of the inconsistent and uncoördinated views of State management of commerce, that when each State is exercising its power to determine the terms on which its commerce can move within its own borders, there is such a difference of conception of the problem that the commerce of none of those States moves on the same terms?

Effect of State Laws Imposing Penalty for Failure to Furnish Cars.

As indicating the diversity of State policy in respect to these matters, and of the effect that one State law may have upon the commerce of another, I bring to your attention the different laws of the States in respect to the fine that may be imposed for failure to furnish cars. One State I

have in mind imposes a fine of five dollars a day for not furnishing a car on demand. Another State imposes a fine of one dollar a day for not furnishing a car on demand.

The Interstate Commerce Act imposes no fine. Now, take the present condition of car shortage, in which, in obedience to the great currents of commerce, the available equipment of the railroads has passed on to some other section of the country, and imagine the case where there is only one car to supply these three demands—the demand of the State which imposes a fine of five dollars, the demand of the State which imposes a fine of one dollar, and the demand of the Interstate Commerce Commission which has no fine in regard to the failure to furnish a car—one car to be selected for the three, two to “go without,” one “to have.” Which is going to get it? And when the State with the severest penalty gets a car, it has taken it away from its sister State, it has taken it away from interstate commerce. Is that a proper balance of power in respect to the matter in which all the States and all the people are interested? Ought the question of a fair and equitable distribution of car supply to be in the hands of the selfish interests of one of the States, or ought it to be in the hands of the Government of all the States, which can act impartially between them?

Effect of State Regulation of Issuance of Securities.

I will illustrate another situation. I attempted to show you yesterday the great interest which the whole public has in a proper supply of new capital. There are 19 States in this Union now asserting the power to regulate the issue of new securities, each demanding the power to approve or disapprove. Now what is the subject-matter in respect to which they are exercising that power?

The mortgages or the stock issues of these continuous lines of railroad relate to the whole line, not to the part within a single State, unless under most unusual conditions. The

general situation is of a mortgage which covers the property from end to end and through many States, or the stock which is based upon an ownership in the whole line through many States. Now 19 States say that such a railroad as that, in which ten or a dozen States are interested, can not raise any new money, cannot provide any new facilities without the consent of that one State. What is to become of interstate commerce under such a restriction as that? Here are facilities needed, vast quantities of new equipment to go from one end to the other of this Continent, and yet 19 States say you cannot issue any securities to buy that equipment without the consent of each one of us.

Let us see how it has operated in practice. Let us see some of the instances in which the power has been exerted, and inquire what has been the effect upon other States of the exercise of that power.

Case of the New York Central Railroad.

There was the great New York Central system, running from the City of New York through the whole extent of that State, across the State of Ohio, across the State of Indiana, and, for a few miles, into the State of Illinois—less than 20 miles,* I am told, in the State of Illinois. Recently they desired to issue a large amount of securities for the purpose of reorganizing and coördinating that whole system. The State of Illinois was called upon to give its consent to that issue. They gave it, but they said the laws of the State of Illinois imposed as a condition of our consent a tax of \$1 per \$1,000 on this issue, and thereupon they insisted on a payment of \$600,000 by the New York Central as a condition of the issue of those securities. Less than 20 miles of the railroad in the State of Illinois. That railroad, running entirely across the State of Indiana, entirely

*See corrected statement, p. 77.

across the State of Ohio, entirely across the State of New York. What greater right had the State of Illinois to exact that \$600,000 than the State of Indiana had or the State of Ohio had or the State of New York had? And if all had done it, if all had exercised that power, what would become of the possibility of making that financial transaction, which was approved by the Commission of the State of Illinois?

Are the people of the different States of this country going to remain long in silence and accept this power of exaction which one of the States may make, the effect of which is to place a burden upon their commerce and a limitation upon the facilities upon which their people are dependent? Somebody must pay that \$600,000. It must have some effect upon the public, either in the payments they must make to sustain it or in the withdrawal of that amount from the facilities which the public ought to have to carry on its business. Somebody must pay it; some public interest must be burdened, and can you for a moment tolerate the conception that an instrumentality on which the States of New York, of Ohio, of Indiana, and of Illinois are dependent, shall be burdened, shall be crippled, by the imposition of a tax which is approved by the policies of the State of Illinois, but which is rejected by Indiana, by Ohio, and by New York?

Case of the New York, New Haven & Hartford Railroad.

Are you familiar with the recent instance of what has happened in the New England States in regard to the New York, New Haven & Hartford Road? Recently that road was confronted with the early maturity of a number of short-term notes. It wished to provide the means to take up those notes, and in addition a fund of \$25,000,000 to give enlarged terminals, more equipment and better facilities to the commerce served by that property. It was necessary to go to Rhode Island, to Connecticut and to Massachusetts in

order to obtain the approval of those States to the issue of that \$67,000,000. The State of Rhode Island gave its approval; the State of Connecticut gave its approval, but when Massachusetts was reached, although its commission approved of what ought to be done, it was found that the laws of Massachusetts forbade, as construed by the highest court of that State, the laws of Massachusetts forbade that issue. So that the \$67,000,000 of securities could not be issued, although approved by the commissions of all three States, although necessary in the public interest according to their conclusion, because in the laws of one of the States an impediment existed which prevented the policy of the other two States from being carried out.

And we see now in the embargoes which have been put upon the New England roads, in their congested condition, in their incapacity to serve the public, the loss of this \$25,000,000, part of the \$67,000,000 which was intended to supply the very facilities which is making the commerce of New England break down.

What right, what governmental right, have the laws of the State of Massachusetts to stand in the way of the commercial facilities of Connecticut and Rhode Island? What are the inherent difficulties and troubles in this system which permit the policies of one of the States to stand across the path marked out by the others and to prevent any expansion of the commercial facilities upon which all are equally dependent?

The "Full-crew Laws" of New Jersey and Pennsylvania.

I will give you another striking instance of the burden placed by some of the States upon other States. I shall not attempt to discuss the wisdom or the unwisdom of any State. I am attempting to discuss merely the conflicts between the States.

Here are the States of New Jersey and of Pennsylvania

that have believed it right to pass a law, called by some people the "full-crew law," and by other people the "extra-crew law," which means that the laws of those States require that the complement of the train crew shall be increased up to the standard fixed by the acts of those States. Now those laws operate on railroads which are not confined to those two States. They operate on railroads which go through New Jersey and Pennsylvania, but also through Ohio, Indiana and Illinois, through Delaware, Maryland and West Virginia and beyond.

Not one of the other States which I have mentioned has given its approval to those laws. Right or wrong there is a conflict in view between the States of New Jersey and of Pennsylvania who make this requirement, and the States of Ohio, Indiana and Illinois, Delaware, Maryland and West Virginia, which do not make it.

The result of the action of New Jersey and Pennsylvania is to impose an annual charge upon those railroads, amounting to \$1,700,000 a year, which is interest at 5 per cent on \$34,000,000. The commerce of those States does not pay that charge. It pays only their proportion of that charge. The commerce of Ohio, Indiana and Illinois, and of Delaware, Maryland and West Virginia, is called upon to contribute.

What justice is there in the commissions of these other States being burdened with that charge which they do not approve, to carry out a policy which they have not adopted, simply because some other State has adopted it? What soundness is there in the view that one State should thus possess the power of encumbering with charge the business of other States, in order to carry out a policy in which those other States do not participate?

But that means that the action of the State of New Jersey and of Pennsylvania—right or wrong, I shall not discuss—but it means that the actions of those States have laid their hands upon the capital fund of \$34,000,000. five per cent

of which is the \$1,700,000 annual charge to which I have alluded, and have produced that much incapacity on the part of those carriers to apply that capital fund to increased transportation facilities in these other States as well as in those States. The policies of those States have required that an interest which would support a capital investment of these \$34,000,000 should be withdrawn from the establishment of facilities which these other States might have preferred, in order to carry out the State policy in respect to this full or extra crew provision. This provision may be right or it may be wrong. That is not the question. The question is, which authority—what governmental authority—ought it be able to say whether or not the charge shall be imposed upon the commerce of America. Is it right that one of the States should be able to say it or ought that question to be passed upon by the authority which represents all of the States, which can look into the comparative needs of all American commerce and shall parcel out the burdens with an equal hand, applicable everywhere alike.

Case of the Southern Pacific Railway.

I find that I have omitted to mention one of the features of the operation of this law, where a State is exercising the power of approval or disapproval of the securities, which ought not to be forgotten, and I will revert to that part of my argument for the purpose of mentioning that now. I refer to the issue by the Southern Pacific of a large amount of capital shares, which was approved by the State of California, but where application had also to be made to the State of Arizona. When application was made to the State of Arizona the approval was given, but a condition was attached that a part of the proceeds of those securities must be expended in the State of Arizona. No impartial authority established to determine where that amount of money could best be expended in the interest of the commerce of the

whole people, but each State able to affix its own selfish conditions, and say, "I will give my approval, but some of it must be spent right here," and, designating the amount.

Now, let us suppose a case where the whole of that capital fund, coming from that issue of securities, was needed in some other State, or was needed in facilities for interstate commerce. Suppose, to make the supposition simple, that the whole of that fund was in reality needed to buy equipment which would go everywhere, and the State of Arizona affixed a condition that it should not be all spent in equipment, but some of it must be spent right there in the State of Arizona, in some subject of investment, not needed in the opinion of the railroad, and not needed in the opinion of the great commercial public, but required merely as the exercise of a power, and that power exercised, perhaps, in obedience to some considerations of political expediency. Now, ought these business enterprises be subjected to that? If they ought, the conclusion that they ought must be based upon the idea that they have an inexhaustible treasury which may be controlled without regard to the ultimate needs of commerce, but from considerations of merely local and political expediency. All of us know that the capital fund of these railroads is limited; all of us know there must be as much wisdom in the expenditure of those capital funds as there should be in the expenditure of the capital funds of the nation or of a city, and we all know that they cannot long survive a system which empties their treasury not out of regard to the interests of commerce, but out of some local or neighborhood conception of what is politically expedient.

Different Views on Federal Regulation of Issuance of Securities Held by Different Congresses of State Railroad Commissioners.

This matter that I am now alluding to was considered so important that it was made a matter of debate in the Congress of Railroad Commissioners held in this City last week, the minutes of which I hold in my hand, where that matter that I have just alluded to is condemned. The conception of what is fair and just in this matter has had a stormy history in the consideration of these State commissioners themselves. There has been a struggle on the part of some of them to recognize the national aspects of this problem of the approval of capital issues of these railroads, and the pendulum has swung back and forth from different meetings of these commissioners, they having adopted in 1913, a resolution which is here, saying that the matter of controlling the issues of these interstate carriers should be in the hands of the National Government, whereas, when 1914 came, they met in convention and took the opposite view, that it should not be only in the hands of the National Government, but should also be in the hands of the States, and now, in 1916, they come together again.

In a deliberate report of this committee they report favorably certain conclusions, the first of which is this, that the Interstate Commerce Commission be given power to regulate the stocks and bonds of interstate carriers. That is one of the issues that you gentlemen will have to determine.

Approval of Security Issues Must be Promptly Given.

You will have to determine it not only by the considerations which I have mentioned, but by the consideration of creating a workable system, because no railroad can be financed unless the men charged with the responsibility are in a position to act promptly, and to take advantage of

favorable market conditions. Promptness is an essential element in any system of finances, and if a proposition to make a capital issue and to obtain money for the needs of the commerce of the country must go not only to the national government, but to the authorities of many States, time will be consumed, which may defeat the whole purpose.

The usual method of doing these things is to find out from some group of bankers or from some banking institution, whether or not they will take an issue of securities and agree upon the price. They will make their acceptance or refusal of that offer of those securities on existing market conditions. They will not consent to leave an open offer to be availed of at any indefinite time, but a time limit, and a short time limit, is necessary in order to insure their cooperation.

To create a system of approval of these securities, which means that not only the National Government but that each of the forty-nine States or each of the nineteen States, or each of several States must all be appealed to to give their securities, disappoints the very opportunity in many cases that would otherwise be able to handle the transaction.

I am acquainted with a situation which well illustrates the point to which I have alluded, which I have stated under a supposition in the following language:

“Conceive the not impossible case suggested by a recent dramatic event in the history of the world.

“A railroad company has been maturing for some time past a large financial plan with the purpose of taking advantage of a general market such as we all know recurs at periods some times widely separated. A great steamer, say the *Lusitania*, sails at a moment of international tension. Those in charge of the financial policy of the railroad are justified in believing that something may happen to that steamer which will affect international relations and destroy for many months, and perhaps for years, a market for securities. So far as their own business preparation is concerned, they are ready to bring out the carefully matured plan and place their securities. It becomes

then a question of days before the possibility of disaster to that steamer may be realized. Meanwhile some State commission, for some such reason as has been suggested, is delaying the approval of the issue. It does delay until the disaster happens and so defeats the financial plan, with the result that there is at least an indefinite postponement of additional railroad facilities essential to the best interest of the commerce of the country."

Control of Issuance of Securities Must be in Hands of Federal Government Alone.

It seems to me it requires no longer consideration on the part of men of affairs charged with large and far-reaching responsibilities in respect to this matter, to show that the system of controlling issues of interstate carriers must be in the hands of the National Government and in the hands of that Government alone. Why should it not be? Is the nation a foreign power? Is the Congress of the United States inimical to the States? Is it not a part of the American system of Government? Are you not placed in national control because there are certain national affairs in which all States are interested, and there must be, in the nature of the case, an impartial tribunal between them which shall decide the cases with which this universal interest is affected. Are you not a part of the system of constitutional Government, and are you not required, out of the necessity of the case, to act in these matters where an impartial authority between the various States is needed in order that justice may be equal, and in order that there may be no race of greed and no narrow policy on the part of this union that will oppress the people of the other States?

Power of States to Discriminate Against Commerce of Other States.

There is another feature of State regulation to which I would like to invite your attention. It is already so completely in the public eye that a reference to it is hardly necessary--and that is the question of the power of a State to discriminate against the commerce of other States. I allude to the Shreveport case where Texas declared a policy of controlling a foreign market in favor of its own traffic and sought to exclude the trade of Louisiana from Texas markets by reducing the level of rates within the State below the level of interstate rates.

That was the assertion of a power to create at State lines a barrier against interstate commerce. After that case was fought out and it was determined that even under existing laws there was a power in the Interstate Commerce Commission to prevent such discrimination, a bill was introduced in the Senate of the United States by a distinguished Senator to abolish that doctrine, and a hearing was had before the Interstate Commerce Committee of the Senate on that bill. On the one side were the authorities of the State of Texas, supplemented by the active support and encouragement of a committee from the National Association of Railway Commissioners; on the other side was the Assistant Attorney General of the State of Louisiana, a representative of the Railroad Commission of Louisiana, and a representative of the trades bodies of the city of Shreveport, and there a debate was had before that committee. It transpired in the course of that debate that while Louisiana was attempting to get into the markets of the State of Texas and was being hampered and impeded by the policies of that State, that the city of Natchez, Mississippi, was trying to get into Louisiana and was impeded by the policies of that State, and at a lull in the proceedings a gentleman came into this room, whom I had never seen before, but of course well known to me by reputa-

tion, and at a convenient time he arose and said that he wished to introduce into that record some telegrams that he had received from his State, and that gentleman was the distinguished Senator from the State of Missouri, Mr. Reed, and these are the telegrams he read:

"ST. LOUIS, MISSOURI, June 29, 1916.

"Senator JAMES A. REED,
"Washington, D. C.:

"We understand there is a hearing before the Senate Committee in Washington tomorrow on bill fifty-two forty-two introduced by Senator Sheppard, of Texas, seeking to nullify Supreme Court Shreveport decision. St. Louis as a city on the borders of the State suffers extremely from the very condition which that bill seeks to perpetrate. We already have pending before the Interstate Commerce Commission a proceeding seeking to prevent discrimination against this city arising out of the action of the Illinois legislature and Public Utilities Commission as illustrating how we are affected. While it only costs twenty-five cents to come across the bridge from East St. Louis the fare from Chicago to East St. Louis is one dollar eighty-eight cents less than it is to St. Louis. This of course is merely a sample of what happens with respect to passenger traffic. A similar situation exists with respect to freight traffic. We most earnestly protest and ask your aid in preventing the passage of the bill.

"THE BUSINESS MEN'S LEAGUE
OF ST. LOUIS.

"CLARENCE H. HOWARD, *President*;

"GEO. W. SIMMONS,
"Chairman Traffic Bureau;

"GEO. J. TANSEY,
"Chairman Committee
National Legislation."

And then when that was read he asked that another telegram should be read and said:

"I have a similar telegram which reads as follows:

"ST. JOSEPH, MISSOURI, June 29, 1916.

"Hon. JAS. A. REED,

"United States Senate, Washington, D. C.:

"We understand that there is a hearing before the Senate Committee tomorrow on bill fifty-nine forty-two introduced by Senator Sheppard, of Texas, and respectfully urge upon your consideration that our people are very much opposed to limiting the powers of the Interstate Commerce Commission and broadening the scope of State regulating bodies in matters of railroad regulation. It is unnecessary for me to call your attention that if this amendment is adopted it will enable State regulating bodies to reduce freight rates on shipments moving entirely within State regardless of interstate rates and will very seriously injure the jobbing interests of Missouri which perhaps has more jobbers in proportion to her population than any State in the Union. You are no doubt aware that we now have before the Interstate Commerce Commission for decision rates promulgated by the Nebraska State Railway Commission decision in which case was expected last January but owing to the gravity thereof the Commission apparently has been weighing the situation.

"W. J. C. KENYON,

"Manager Traffic Bureau Commerce Club."

The echoes of that had hardly died away when the new Senator from the State of Tennessee appeared. Senator McKellar, and said that he appeared in behalf of commercial bodies of the city of Memphis to complain that the State of Arkansas would not permit Memphis to get into its market, but was excluded.

Case of Caysville, Ga., and Copperhill, Tenn.

I desire to narrate an incident that I will have to give you from memory, as I do not seem to have the paper which I thought was among the papers before me.

Some years ago an application was made to the Railroad Commission of Georgia to establish a station at the State line of Tennessee, where there was a station just across the line in Tennessee, and the Georgia Commission heard that application, and declared that, upon looking into the situation, they found that the Georgia rates were lower than the interstate rates, and that the influence behind that application was to have a station established just inside of the Georgia line so that the interstate commerce intended to be carried across the line should go on the Georgia rate; and they declined it because they said that was the situation, and they illustrated by saying that the interstate commerce from a Georgia point to Tennessee, that could be accommodated from this proposed station, would go at State rates, or at interstate rates, if consigned across the border a few hundred yards further, in accordance with the desire of the shipper. The Tennessee business could come into Georgia either at Tennessee rates or at interstate rates, in accordance with the determination of the shipper in Tennessee, and the consignment that he made of his business, and that was a mere device for the purpose of destroying the effect and the authority of interstate regulation, and that they would not be a party to any such exercise of power.

No Practical Power Now to Correct This Abuse.

Now, you say to me: But in this matter of discrimination against interstate commerce there is now ample power in the Interstate Commerce Law. Let us look at recent events and find whether that is so.

Within the last few months the Interstate Commerce Commission has found that the passenger fares in Kansas discriminate against interstate commerce passenger fares, being two cents for one, and two and one-half cents for another, and they have undertaken to fix, under this authority, the State rates in Kansas. They say that 2½ cents is as little as the public interest will permit, in respect to passenger

fares; and, therefore, they have undertaken to fix these passenger fares so that the State rate shall be brought up to what they have determined is a reasonable limit. Did the matter end there? At once, when an attempt was made to obey this order of the Interstate Commerce Commission the authorities of the State arrayed themselves against it, and the railroads that were subject to this order went into a court in the State of Kansas and secured an injunction against interference by public authorities with them. Thereupon, the public authorities in that State went into another court and got an injunction against the railroads, forbidding them to obey the order of the Interstate Commerce Commission; and those two cases are pending there now.

So that, although the power was thought, possibly, to be included already in the powers of the Interstate Commerce Commission of preventing that discrimination, we find that, practically, it is not there, because it is not accepted as a construction of the law under which all people will live, and obedience to it is obstructed by every legal process that can be devised; and, meanwhile, commerce, interstate commerce, commerce of all the people, is not moving on terms which the Supreme Court of the United States and the Interstate Commerce Commission say are the lawful terms on which it should move. Now, we say that matter ought to be made clear in the law.

Conflict Between Interstate Commerce Commission and Georgia—Long-and-short-haul Clause.

There is another striking illustration which is attracting public attention at this very moment. Some time ago the Congress amended the fourth section of the Act to Regulate Interstate Commerce, known as the "long-and-short haul-clause," and, under its provisions, has required the southern carriers to readjust their whole systems of rates in the South, which has been done, after two years of most extensive and arduous work, and with the result that it is ap-

proved by the Interstate Commerce Commission and ordered to be put into effect.

Now, when we come to the State limits of the State of Georgia we find that it is necessary to obtain the consent of the Commission of that State to any readjustment of the rates there in order to make this adjustment ordered by the Interstate Commerce Commission effective, and we have been obliged to prop up, in every conceivable and in every temporary way possible, the system of long-and-short-haul rates, that await the decision of the State of Georgia. Now, fortunately, in the State of Georgia, we have men of great capacity and great fairness on that Commission. We are anticipating that ultimately we will get that consent; but the power to give the consent involves the power to refuse the consent, and in measuring and estimating systems of public law, we must not be controlled simply by whether or not a law is wisely and fairly administered, but by the possibilities of unfair and improper administration of it.

A System of Regulation Must Recognize the Entity of Transportation Systems.

We are here studying systems; we are here seeking for the philosophical principle of law; we are attempting to devise a well-balanced system of regulation, in which the people shall not be dependent merely upon the wise and the fair, or the unwise and the unfair exercise of some given power. We are trying to show that there must be no interposition of any power which, if improperly administered, may be destructive of the public welfare, and we are confronted, in that view of the case, with a situation which I have described, existing in the State of Georgia, where we have had our men before that Commission for the last four or five months, attempting to demonstrate to the Commission the propriety of their application, and with concession always, by the very fact of our appearance, that it is dependent upon their judgment, and not upon the operation

of the Interstate Commerce Laws, as to whether or not it is possible to put the Interstate Commerce Laws into effect.

Is that a secure basis of law? Is that a condition which can be tolerated by the statesmanship of America? Is that a fair balance of the powers between these two sovereignties? Or must we seek for a remedy which will recognize what commerce is; that it is one inseparable, indivisible entity, which must be consistently regulated through all its parts, or somewhere an unhealthful strain will be put, or somewhere an unjust burden will be imposed?

Turning, for a moment, to another aspect of this case, let us conceive of a railroad running through eleven States; 85 per cent of its business is interstate commerce; 15 per cent of its business is state commerce. Let us conceive of a case where the interstate policies of the National Government, and where the views of ten of the States concur in the wisdom of maintaining that instrumentality of interstate commerce at a high and efficient standard; suppose that one of those States refuses any substantial contribution on the part of its commerce to the maintenance of that standard deemed essential in the public interest by the interstate commerce authorities and by the ten other States: what is to be done? Are the interstate commerce authorities and the ten States to surrender to the one, and to accept its standard? If so, that one State regulates interstate commerce, and regulates the commerce of the ten other States; it imposes upon them all inadequate transportation facilities. Or shall the other ten States and the interstate commerce say, "We will not accept the views of that one State; we will insist on this instrumenality, upon which we are all dependent, being maintained at this high standard of efficiency." How is that to be done? It is to be done by taking the burden which the one State refuses to bear and placing it on interstate commerce and on the commerce of the other ten States.

There is a shift of burden, unjust and inequitable in its character, from the State that declines its contribution, that

refuses to recognize the accepted standard of efficiency of the carrier, upon which all are dependent, and a shifting of its burden upon the commerce of the ten other States and upon interstate commerce.

Now, is any system of jurisprudence sound which permits that result? Is there any system of governmental regulation sound which puts at the mercy of one of the States the commercial policies and interests of every one of the other States, dependent upon the same carrier for facilities?

We must recognize, gentlemen, that the progress of invention, that the application of new forces, that the triumphs of human genius have confronted this country with a new conception of what commerce is and what the needs of the people are in respect to it. We must recognize that these instrumentalities of commerce have in effect become and are to be considered as great national improvements and that systems of jurisprudence must be adjusted so as to take adequate note of this great transformation, which lies so near to the essential welfare of the American people.

Historical Sketch of the Constitutional Conception of Commerce.

This leads me to ask your attention to something of a fundamental study of the constitutional conception of commerce, of the reasons which have brought our constitutional system into effect, and to try to deduce from that something of what the governmental duty of this country is in dealing with this important subject.

When the time came, after the successful termination of the War of Independence, for us to begin to try to form a permanent system of government which should be adequate to the requirements of our people, we found a situation to exist in which each State possessed the power of imposing export taxes on traffic going to its sister States, and thus enabling it to keep its products at home, excluding them

from the use and enjoyment of the people of the other States; that each State possessed the power of imposing import duties as against the other States, and thus could exclude people of the other States from its markets, and that each State retained complete control over its own ports, and thus, by its commercial policy, could, through the competition of ports, regulate or break down the commercial policy of another State in regard to its own ports and in regard to its own commerce. We find, too, that those were not merely theoretical powers, but that they were exercised by the various States. For example, we find that Virginia, by her export duties, and inspection laws, with the incidental tax, sought to keep her tobacco at home; that Maryland, by her inspection laws and taxes, sought to do the same with regard to certain of her products; that Massachusetts prohibited the exportation of grain or manufactured calfskins and imposed and required an inspection tax on exports of other States on tobacco, butter and other products, while North Carolina, for a limited time, placed an embargo on the exportation to other States of corn, wheat, flour, beef, bacon, and other necessities of life. Turning to imports again, we find that New York, by imposing an import duty, sought to exclude from its markets the butter, milk, and other dairy products of New Jersey, and the firewood of Connecticut. That Rhode Island imposed an ad valorem tax of 5 per cent on all articles imported into that State from the other States, as well as from foreign countries, with a proviso for reciprocal relief,—and so with the other States.

We find that the ports of Boston and New York were, at one time, far behind Newport in the value of their imports, and that Rhode Island, according to the Supreme Court of the United States, paid all the expenses of her government by duties on goods landed in her principal ports, and furnished to the people of the other States.

The condition at that time of commercial selfishness and greed between the States is thus described by Fiske, in his

work on *The Critical Period in American History, 1773 to 1789*, and I quote from Fiske, as follows:

"Meanwhile the different States, with their different tariff and tonnage acts, began to make commercial war upon one another. No sooner had the other three New England States virtually closed their ports to British shipping, than Connecticut threw hers wide open, an act which she followed by laying duties upon imports from Massachusetts.

"Pennsylvania discriminated against Delaware; and New Jersey, pillaged at once by both her greater neighbors, was compared to a cask tapped at both ends. The conduct of New York became especially selfish and blameworthy. That rapid growth which was soon to carry the city and State to a position of primacy in the Union had already begun. After the departure of the British the revival of business went on with leaps and bounds. The feeling of local patriotism waxed strong, and in no one was it more completely manifested than in George Clinton, the Revolutionary general, whom the people elected Governor for nine successive terms. * * * It was his first article of faith that New York must be the greatest State in the Union. But his conceptions of statesmanship were extremely narrow. In his mind, the welfare of New York meant the pulling down and thrusting aside of all her neighbors and rivals. * * * Under his guidance, the history of New York, during the five years following the peace of 1783, was a shameful story of greedy monopoly and sectional hate. Of all the thirteen States none behaved worse except Rhode Island.

"A single instance, which occurred early in 1787, may serve as an illustration. The city of New York, with its population of thirty thousand souls, had long been supplied with firewood from Connecticut, and with butter and cheese, chickens and garden vegetables, from the thrifty farms of New Jersey. This trade, it was observed, carried thousands of dollars out of the city and into the pockets of detested Yankees and despised Jersey men. It was ruinous to domestic industry, said the men of New York. It

must be stopped by those effective remedies of the Sangrado school of economic doctors, a navigation act and a protective tariff.

"Acts were accordingly passed obliging every Yankee sloop which came down through Hell Gate, and every Jersey market boat which was rowed across from Paulus Hook to Cortlandt street, to pay entrance fees and obtain clearances at the custom-house, just as was done by ships from London or Hamburg; and not a cart-load of Connecticut firewood could be delivered at the back door of a country house in Beckman street until it should have paid a heavy duty. Great and just was the wrath of the farmers and lumbermen. The New Jersey legislature made up its mind to retaliate. * * * Connecticut was equally prompt. At a great meeting of business men, held at New London, it was unanimously agreed to suspend all commercial intercourse with New York. Every merchant signed an agreement under penalty of two hundred and fifty dollars for the first offense, **not to send any goods whatever** into the hated State for a period of twelve months. By such retaliatory measures it was hoped that New York might be compelled to rescind her odious enactment. But such meetings and such resolves bore an ominous likeness to the meetings and resolves which in the years before 1775 had heralded a state of war; and but for the good work done by the Federal convention another five years would scarcely have elapsed before shots would have been fired and seeds of perennial hatred shown on the shores that looked toward Manhattan Island."

That is the condition which confronted this country at the time that the question of adopting a commercial policy was under consideration. Not only that, but the question of the relation of the thirteen colonies of the great undeveloped section of the West was involved. There was Great Britain on the northern boundary; there was Spain on the southern boundary, attempting by conciliatory commercial and political policies to secure the political allegiance of the

people of that great developing country, and it was perceived by George Washington and by the others who had control of the policies of that day that if, super-added to those advantages and those proximities of neighborhood there should an ideal grow up, that each of these commercial States—I mean the States along the American coast line—could shut their ports so that the people of the West would be obliged to pay tribute to the people of the East; so that the supplies which were brought in here for consumption in the great northwestern territory would have to pay tribute to the eastern ports before they could go to supply the needs of those pioneer communities, that then a condition of alienation so tremendous would grow up as that the great West would throw its political fortunes, some with Spain on the South and the others with Great Britain on the North.

And in order to prevent that, the statesmen of that day, led by Alexander Hamilton, James Madison, and James Monroe, and a great number of public assemblages in all parts of the country, determined that there should be established for the American people, the doctrine of free trade among the States. It was to meet the selfish policy of some of the States, as illustrated against Connecticut by the State of New York, and against New Jersey by the same State; as illustrated by Rhode Island against all her sister States; as illustrated by Virginia and Maryland and North Carolina in the restrictive legislation in regard to their own products. It was to stimulate the necessity of binding the great developing northwestern territory into the Union, by showing its people that the things they had to consume and which must be imported would not be subject to a levy in favor of the other States, but should go unburdened to them, that the commercial policy of this country was conceived and was adopted. So that the very thing I ask you to remember, the very thing that created the constitutional system of free trade among the States, was the historic fact that some of the States were selfish, that some of the States attempted to

live off sister States, and that there was an effort made to embarrass commercial intercourse in favor of the selfish and narrow interests of some of these State bodies. To meet that, the Constitution of the United States was adopted, and to express it, the power of regulating interstate and foreign commerce was surrendered by the States into the impartial hands of a national body, which should represent and act for all the States. That was the genesis of your system. That was the cause of its adoption. That was the reason for its existence. It purposed to prevent the oppression of one State by the differing and narrow policies of another State.

By the Constitution the States Reserved Certain Powers and Acquired Certain Rights.

Now, what then do we see happened? We see that these States met in convention; they determined to divide their rights into two sets, one the governmental powers which they reserved; the other, the governmental powers and protection and rights which they acquired by going into the Union. There were thus State rights which were reserved; there became State rights which were acquired, and it must be noted that each one of those States prized higher the rights which they acquired than the rights which they surrendered. The rights which they acquired were no less State rights than the rights which they reserved. It is just as much a State right of Virginia to have the United States Government do for it the things which it promised to do, when the State entered the Union, as it is to exercise its own reserved police power within its borders.

What Rights Did the States Acquire?

What are those rights which were acquired? One of them is the right of national defense. It is a right of Alabama and Iowa and Georgia, if any of them are attacked, to have

the nation come to their defense. That right would not have existed, except for the compact of the onstitution. That right was a right acquired by entering the Union. That right is an acquired right of the States and is as substantial as any right which was reserved. They acquired a right to a national system of post offices and post roads. That right would not have existed, except for their going into the Union, but it is a State's right now, none the less sacred and none the less important because acquired instead of reserved, that the nation should furnish the States with their post office facilities. The States acquired the right by entering the Union to a uniform system of tariff and of port policies. Unless the Union had been entered, the people of Wisconsin would have had no right to the equal entry with the other States in the port of New York. They would have no right, except that they entered the Union, to a uniform tariff policy throughout the Union. They acquired the right to uniform tariff policies and to uniform port duties and laws, by entering the Union. We find no dissent and no jealousies in respect to any of those matters. We find no hankering anywhere for a State to assume the right to defend itself against attack. We find no demand anywhere for a State system of post offices. We find no demand anywhere for a separate tariff or port policies. No State right is considered as infringed by the enjoyment of those fruits of national helpfulness to which they acquired a right by entering the Union, but none the less, gentlemen, no less sacred, no less complete, no less important, is the right which each State acquired when it entered the Union to a uniform commercial policy and to free trade among States.

One Great Right Acquired is to Have Commerce Uncontrolled Except by National Authorities.

There, the power was given as an acquired right of each State that its commercial policy shall not be

made by its neighbor, but should be controlled by the national authority, which should act impartially between the States, and which alone could speak for all. So, when I come to hear a question of State's rights involved in this matter, I hasten to accept the comforting realization that the right which each State acquired by entering the Union, as high, as complete and as important as any other, is that the commerce of my State shall not be controlled by the different policy of a State across the border, but that I can come here where I am, in my father's house and where each one of you represent me as much as you represent any other section of the Union, and can plead for an impartial, a fair, a helpful and a comprehensive regulation of my commerce, and expect to be answered with some just and equitable and comprehensive and equal system of regulation throughout the Union; where I am not dependent on what the people across the border may do in throwing burdens upon me, but where the burdens that come shall come from the representatives of us all, and be distributed with an equal hand among all the people of this continent.

Am I intruding upon any sacred rights of anybody by asking that? Am I disregarding any just power of anybody else when I ask for that? Am I violating any constitutional right of anybody else when I ask for that? I feel that merely I am coming to the constitutional fountain of all our rights, and asking that a policy which shall apply to all, that shall affect all, that shall protect all, shall be the outcome of the universal judgment, and not of the judgment of a small fractional part. And when I make that request, I am not asking the disregard of a State's right; I am asking for the enforcement of a State right, and it seems to me that that issue should be decided, not by jealousy of the distribution of governmental power, but by the determination of the issue whether, in the interest of all the people and all commerce, there should be a regulation by one central and all-comprehending and all-comprehensive authority. It is

manifest that the only way to exercise a complete and a protecting and helpful regulation is to take hold of the instrument of interstate commerce. You cannot divide its business; you cannot leave one part of its business to somebody else's regulation and you regulate the other, because the influence of a regulation of any part may have such destructive consequences upon the instrument of interstate commerce, that the different States dependent upon the same interest may be most unfortunately and most hurtfully affected.

The only method of dealing with that question is, and I repeat it, for you to regard commerce from the standpoint of its instrumentality, to take possession of that instrumentality, to determine the standard of usefulness, and to determine the standard of its correction, and to determine the standard of the constructive principles of government which should be made to apply to it.

Mr. Chairman, do I understand that one o'clock is the hour for adjournment?

Mr. ADAMSON: If you are tired, Mr. Thom, I will make a motion to that effect.

Mr. THOM: I have spoken today as long as I think I can comfortably do so.

The CHAIRMAN: Mr. Thom, Mr. Thelen, of the California Commission, desires to return to California as soon as possible, and would like to be heard next Tuesday. How would that suit your engagements?

Mr. THOM: I do not desire to stand in the way of anybody, Mr. Chairman.

The CHAIRMAN: How much longer will your presentation take?

Mr. THOM: I will probably finish my presentation in chief, tomorrow. I am told, in a very suggestive way, that I may be subjected to cross-examination for about a week.

(Laughter.)

Mr. BRISTOW: Mr. Chairman, speaking for Mr. Thelen,

I desire to say that he does not wish at all to appear before Mr. Thom has completed his entire statement, and has had ample time to do so. Of course, he would like to go home, but we are here and we do not want to return until there is a full presentation of the case which the carriers desire to present. If that can be done by Tuesday, all right; if not, we will delay our appearance.

Mr. ADAMSON: I move that we go into executive session.

Senator CUMMINS: I want to ask a question of Mr. Thom. Mr. Thom, you intend to discuss the legal aspects of this matter before you finish your argument, do you not?

Mr. THOM: I did expect to discuss that, probably at a later date. I will state my conclusion as to the legal matters, but as to the legal argument, I supposed that would be desired at a later period. I had not intended to enter into anything but the fundamentals of the legal argument here.

(Further colloquy about appearances of witnesses.)

SATURDAY, November 25, 1916.

The Joint Committee met at 10:30 o'clock a. m., pursuant to adjournment, Senator Francis G. Newlands presiding, also Vice Chairman William C. Adamson.

Present: Senators Robinson, Underwood, Cummins, and Brandegee, and Representatives Sims, Cullop, Esch, and Hamilton.

The CHAIRMAN: Mr. Thom, you may resume your statement.

**Correction of Mileage of New York Central Railroad within
State of Illinois.**

Mr. THOM: Mr. Chairman and gentlemen, Mr. Cullop was kind enough yesterday to call my attention to an error in a statement that I made to the Committee as to the mileage of the New York Central in the State of Illinois. The information on which I was acting evidently had relation to the mileage of the New York Central main line, the one which begins at New York and ends at Chicago. I have undertaken, in consequence of having the suggestion made that the mileage was in error, to find out the exact figures and I have this information which I would like to have put into the Record:

The New York Central has 6,034 miles of first track, owned, leased, or otherwise operated. Of this 149.8 miles are in Illinois. Of all tracks, 14,942 miles, 329.4 miles are in Illinois.

That is supplemented by this letter, the letter from which I take this information:

"The distance from the Indiana-Illinois State line to Chicago is 23.8 miles, and the length of the right of way of the former Chicago, Indiana & Southern (now New York Central), within the State of Illinois is 118.53 miles, so that

the total length of right-of-way of the New York Central in that State is 142.33 miles."

Of course the principle which I was seeking to emphasize is not affected by these figures. It is a mere question of the accuracy of the figures. The point that I was making was that one State has no right to encumber the commerce of a number of other States by exacting for itself a large tax as a condition of its approval of the issue of securities which is imposed on the commerce of all the other States, and to which it has no greater right than any of the other States. I emphasized that by showing the very small mileage in Illinois as compared with other mileage elsewhere, but that was a mere matter of emphasis. It was not a matter of principle. It turns out that there is a somewhat larger mileage in the State of Illinois than I supposed. But to visualize what the proportions are, here is a map of the system and here are the lines of the system before you get to Illinois (illustrating). Then you run up into Chicago a short distance, and there are two or three lines in the State of Illinois, but nothing like an equal proportion to those in the States of Indiana, Ohio, or New York.

The Committee will recall that I have been attempting to develop the view that the credit of the railroads, which must be kept adequate to the public needs, and which is substantially affected by having both revenues and expenses of carriers, is controlled by so many different governmental agencies, and that there is a consequent necessity of simplifying the existing systems so that investors will be subject to only one comprehensive governmental authority, and I further attempted to develop the view that each State by entering the Union has acquired a right to be protected by one impartial regulating power, namely, that of the National Government, against the different views and policies of other States.

Preparedness for National Defense is Essential.

I wish to follow that contention by asking you for a moment to consider the relation of transportation to national defense. We shall, in the course of this hearing, attempt to develop that matter intelligently and comprehensively. The American thought at the moment is concerned with the question of preparedness. Congress, in response to a great sentiment, has voted millions of the public revenues for the purpose of putting this country in a condition of national defense. The mind of the people has been attracted to the great struggle now in progress on the continent of Europe. We have seen small States overrun and destroyed. We have seen large portions of the conquered people deported to alien territory. We have seen one great nation, supplemented, it is true, by the co-operation of one or two others—but one great nation standing out above all its allies, standing out against all its opponents, and sustaining a struggle for more than two years now which has amazed the whole civilized world, and it has been done because that nation was prepared, because that nation was efficient, because that nation was organized in all its parts to throw its whole force into any effort it might make. Its history, the result of this titanic struggle, whichever way it may go, has taught its lesson to the world. It has made men see that the day of the small and defenseless State has passed, and that the day of the great nation, with all its resources available and organized, with all its forces capable of being thrown into active operation, is a necessity of modern development, so much so that here in this Capitol note has been taken of that condition and larger navies are ordered, and a greater army is provided for, and the policy is not only advocated by the President but is accepted by both parties in this country, that this government and its people must be organized and efficient in order to meet any possibilities of the future.

Efficient Transportation the Basis of Preparedness—The Government Charged with Defense Must Fix the Standard of Transportation.

What is the fundamental condition of that organization? Can you organize the American nation, except on the basis of efficient transportation? What would your scattered resources amount to unless there is some way of concentrating them at the point where they may be needed? So that it must be admitted that the fundamental thing to do in connection with national preparedness, in connection with national organization, in connection with national efficiency, is to make certain that the fundamental of them all is provided, and that is adequate transportation. If that be true, and it needs no argument of mine to enforce it—if that be true, what government must, in the nature of affairs, fix the standard of transportation efficiency in this country? The national government is charged with the duty of national defense. Transportation is at the very basis of its capacity to perform that duty. There must be a standard in time of peace of transportation facilities which would bear a proper proportion as to the needs in time of war. There must be a quick opportunity to change peace conditions into war conditions, as respects that transportation; and yet, the creation of a system of national railroad transportation is not the work of a day. It is a matter of slow growth. It is a matter to be dealt with by forward looking men, trying to comprehend the needs of the future and trying gradually to provide for what the interests of the people will demand, and that standard cannot, with any philosophic soundness, be committed to a governmental authority which is not charged with the duty of national preparation and national defense.

Commerce Demands a National Standard.

This is but another angle from which to view this question. The interest of the public as absolute and demonstrable as it is in respect to this matter of defense, in having a national standard of efficiency in the railroads, is no greater than the interest of the public from a commercial standpoint. The facts of the railroads today, the requirements of trade, the way the distance and time have been annihilated by the agencies of steam and electricity, the combination of the whole human family into commercial relationship with one another, the fact that transportation lines are the basis of national efficiency and national defense, in times of war as well as in times of peace, all go to define what the subject-matter is with which you are called upon to deal. It all goes to show that your system of regulation, the attitude of our government towards this question of transportation must, if it is to be successful, recognize the facts. It is impossible any longer to confine commerce within State lines. It is impossible to hold your commerce at the boundaries of States. It is a matter in which, as States, there is no public interest. We are one great commercial family. My interest as a Virginian and your interests in your various States, do not differ in respect to this matter. We have been, up to this time, closing our eyes to the facts of commerce. We have been closing our eyes to the conditions which control intercourse between the various communities of this country and of this world. We have been adhering to the archaic view that States lines and transportation have some reference to one another. Now, can you get a sensible, can you get a sound, can you get an enduring system of regulation, which shuts its eyes to the facts of the case? We must first know the facts. We must first appreciate the facts, or we can never adjust Government regulation to this subject-matter, in a way that will permit it to be enjoyed.

The statesmanship of this land must be able to see the commerce of a world. It must appreciate all of its needs. It must understand that it is accommodated in the largest proportion by these railroads, and it must adjust the railroads to the commerce of the world.

A Vast Field Left for State Authorities.

There is no contention here that State commissions ought to be abrogated. There is no contention here that the powers of the States, where they properly apply to the subject, ought to be invaded or weakened. A vast field of usefulness on any method of dealing with this subject would be left to the States and the State authorities. The questions of taxation, the questions of the exercise of police powers in respect to matters not vital, and which do not affect the other States, the control of public utilities that are local, all of those matters enter into any suggestion which will be made and would be still exercised by the States. But where a matter becomes of such a character, which, if viewed in one way by one State, will affect the destinies and the interests of another State, the influence of which will not be confined to its own borders, but will extend beyond, and affect other people, which, of necessity, will have an influence of a substantial character upon interstate and foreign commerce, and which will affect and perhaps control the standard of efficiency of American transportation, such a matter ought to be taken over by the one authority which can speak for all of the States.

Regulation Must Now Deal with the Instrument of Commerce—and Must be Protective as Well as Corrective.

Heretofore, our system of regulation has dealt with the method of conducting commerce. Now, it is essential that we should provide a means of conducting commerce. Without surrendering any of your corrective power, holding that

in full force so as to deal with any abuse that may hereafter occur, the time has come for the regulating power of Government to take hold of the instrument of commerce and regulate that. No longer content with touching this subject at its circumference, we must rise to the realization of the fact that the time has come now, if regulation is to be regulation, to take hold of the instrument of commerce and regulate that. That must be regulated, not only by corrective processes, but it must be regulated by protective processes. Something must be introduced into our system of regulation that will guard the great public requirements. These instrumentalities of interstate commerce and of foreign commerce, and of all commerce—because you cannot divide their functions—must be put and must be kept in a condition of adequate efficiency, measured by the public requirements.

Now, when you come to study this question, after these 29 years, when you take up the commission given you by Congress, and recommended to Congress by the President, that you shall make a new assessment of the conditions that surround this question of transportation, can you make that new assessment with intelligence or thoroughness, unless you come to see that the problem now is for the nation to guarantee to the public an instrument of commerce?

You see where we are going to. I have tried to point out the tendencies of the times. I have not spoken of it as a matter of immediate disaster, but I have shown you the menace involved in the present condition. And it seems to me that you cannot disregard what these conditions meant and refuse to see that there has arisen a problem which must now be dealt with, and that is the problem of the Nation guaranteeing that there shall be commerce, by guaranteeing in its method of regulation that there shall be adequate instrumentalities of commerce.

My legal proposition is that the Constitution, as now framed, with the powers which it now has, is full of authority to Congress to regulate the instruments of interstate and

foreign commerce in all its parts. At a later day in this hearing I shall ask the privilege of making the legal argument to support that view. I state it merely now.

If your power of regulation is to meet the public requirements your power of regulation must be co-extensive with the instrument of interstate commerce. You must have the right to fix the standards of efficiency; you must have the right to protect it against destruction; you must have the right to follow it with your correcting and with your protecting care, conduct, and policies throughout its whole extent.

With that view of the Constitution, with that view of the needs of commerce, I come to make to you these suggestions, as to what should be done in this matter of regulation, and in which suggestions, with the light now before us, the railroads of this country are practically agreed.

You can understand from what I have said that the first suggestion we shall make is that the entire power and duty of regulation should be in the hands of the National Government, except as to matters so essentially local and incidental that they cannot be used to interfere with the efficiency of the service or the just rights of the carrier.

National Government Must Regulate All Rates.

Now mainly that means that the National Government should take over the regulation of all the rates of the interstate carriers. Of course the exact line of demarkation is a matter of consideration and debate. The exact line of demarkation I mean between what powers should be exercised by the State and what should be assumed by the National Government. We contend that it is impossible for you to regulate this instrument of interstate commerce unless you regulate its rates within the States as well as the interstate and foreign commerce rates.

I have attempted to demonstrate as I have proceeded that the power to fix State rates by the State is a power to fix them in such a way as to throw the burden of maintaining

the instrumentalities of commerce on the commerce of other States and on interstate commerce. Can such a power as that be tolerated by the governmental authority which represents all the States? Can Congress permit Massachusetts to fix its rates so low on State business that the burden of sustaining the instrument of interstate commerce on which both Massachusetts and Connecticut are dependent, shall fall upon the business of Connecticut, or on the interstate business of the two? Is it a sound division of power that attempts the impossible task of dividing up the one single instrumentality of Congress which does both interstate and intrastate business and let a substantial part of the sustaining revenues of that instrumentality be fixed without reference to the whole, be fixed in such a way that at the instance and under the power of one of the States an unfair burden will be thrown upon the other States?

Can you philosophically divide this instrumentality which does all the commerce of all the people over the same tracks and in the same cars and by the same men and say it is necessary to have men of a certain type, it is necessary to have tracks of a certain standard, it is necessary to have equipment of a certain quantity, and then to let some other governmental power come in and withhold its contribution from a part of the business of that same instrumentality, so that the burden will be thrown on some other State or on some other class of commerce?

This is no new view. The underlying principle of it was expressed very many years ago by one of the wisest of American justices, Mr. Chief Justice Marshall. He says:

"The National Government is a Government of all, its powers are delegated by all, it represents all and acts for all. Though any one State may be willing to control its operations, no State is willing to allow others to control them."

What a splendid and accurate application that has to this matter of commerce. Here is an instrumentality in which

all the States in a given group are equally dependent for their means of commercial prosperity. Any one State may be very willing to control its operations, but is any one of those States willing for some other State to control them? If not, then those instrumentalities must be controlled by the Government, which is the Government of all, the powers of which were delegated by all, which represents all and acts for all.

Compulsory Federal Incorporation is Essential.

The next proposition which we will ask this Committee to consider favorably is this:

As one of the means of accomplishing this system of national regulation a system of Federal incorporation should be adopted, into which should be brought all railroad corporations engaged in interstate or foreign commerce. Such a system of Federal incorporation should be compulsory and not elective. It should also preserve to corporations reincorporating under it not only all their contract rights and other assets of all sorts, but also their existing charter powers, except as to any feature contrary to an act of Congress, and should also confer upon them the general powers conferred upon all corporations by the Federal act. The system of incorporation should provide a means for the consolidation or merging of existing corporations engaged in interstate or foreign commerce with the necessary power of condemnation as to assets which cannot be otherwise acquired, such as unassignable leases, etc.

Of course it will be appreciated that this is a proposition of far-reaching consequence. We have been led to it after long debate among ourselves. We found certain of the strong railroad corporations of the country wedded to the conditions under which they grew, possessing favorable charters, sustaining happy relations with their States—we found at first considerable divergence of opinion as to whether they would be willing to give up that enviable position.

But, as the matter was debated from all its sides, as the reasons were given for it and a more comprehensive view was presented, the opposition which at first appeared has in almost every case entirely disappeared. And we are able to present this view as practically—not altogether, but practically—the unanimous view of those charged with the responsibility of these railroads.

National Government Must Have Sole Power Over the Issuance of Securities.

Now, what are the arguments that have brought them to this conclusion? The first of these arguments is this: We are all convinced that in order to satisfy the public view and in order to provide against any possible abuse in financing in the future, there must be a system of governmental regulation of the issue of securities. We are further convinced that the only practicable and working method of securing that governmental supervision and regulation of securities, is to have it through the one body appointed and empowered by the National Congress. We know that no system will continue to work where we have so many masters and so many divergent views as to the financial needs and regulations of these carriers.

Now, how is that national regulation to be secured in such a way as it will be universally accepted as legally and constitutionally sound? We are confronted with a number of State charters which contain limitations upon what the railroads may do in financing. Those limitations are, in many cases, narrow limitations. The financial needs of the public for new facilities have outgrown them, but they are there, as charter limitations upon the State entity.

The Only Sure Way of Giving the National Government Power Over the Issuance of Securities is Through Federal Incorporation.

Now, the question arises, Can Congress remove that charter limitation of the State corporation, thereby in effect amending the State charter so as to authorize a system of financing approved by the national standard?

Now, I have no difficulty in my own mind upon that question. I believe that the constitutional power does exist in Congress to do that very thing. I believe that it is an essential part of the regulation of commerce, and comes within the commerce power as contained within the Constitution, but I do not find any unanimous concurrence in my view of the Constitution in respect to that. Other lawyers of greater eminence, and greater authority than myself believe to the contrary, or at least they say, "Whether we believe to the contrary or not, we contend that there is such a question of doubt in respect to that matter, that it will be impossible to determine which way the truth lies until it is decided by the Supreme Court of the United States." They point to the fact that when an issue of securities is offered, the question of the legal validity of that issue is referred by the investors to their counsel for opinion as to the validity of those securities, and those counsel do not give their opinion of probabilities; they do not base their advice to their client on what they think ought to be; they are cautious gentlemen, and they simply try to find out and say what they know will be. And these lawyers who take a slightly different view from my own as to the constitutional power, ask me, "Suppose a question of that sort, of the right of the National Government to authorize a charter power, granted by a State, to be exceeded, was referred by some banking concern, which proposes to take the securities, to their lawyers. Do you not admit (they say) that that banking concern will be advised that there is sufficient

question about this matter to have it first carried through the Supreme Court of the United States?" And they have asked further, "Can the railroads—can the public—have the whole system of financing halted with no opportunity to raise the funds needed to supply cars and tracks and terminals and yards during the time that it will be necessary to carry that question to the Supreme Court of the United States?"

Well, that raises the practical question, which I think must arrest the attention of every man. I am obliged to say that I think a question will be raised about that; I am obliged to admit that I think, if referred to counsel, counsel will take the opposite side, and will advise that the matter be tested in the courts; and I am obliged to say that that will introduce a period of uncertainty, during which the financing of these railroads will be arrested.

Therefore, I have come to the conclusion that some other method of dealing with the question must be adopted, which will obviate these unfortunate practical results to which I have alluded—unfortunate not so much from the standpoint of the carriers as from the standpoint of the public service.

None of us can doubt the power of Congress to regulate its own creature, and if these roads are made to incorporate under a national charter, then there can be no doubt that Congress can regulate the amount and character of their financial dealings, and when Congress does regulate them, there will be no necessity for carrying the question to the Supreme Court of the United States, and there will be no period during which the financial operations of these carriers will be arrested. So, that practical argument has had perhaps more weight with these gentlemen, who have come to recommend this thing to you, than any other single argument.

Then, there is another reason which addresses itself to us in respect to this matter. Here is a plea made for complete national regulation of the instrumentality of commerce, the

regulation of the instrumentality in all its parts, to a point of protection, to such standard of protection, as the public interest shall demand. The hands of the National Government will be strengthened to make that regulation complete and efficient, if the whole instrumentality is a creature of its own laws. The harmony essential to the equality of commercial opportunity among all the States and all the people will be insured if all of these properties in respect to all their finances, are matters of national authority.

Then we ask that this system shall be made compulsory and not be allowed to be elective; that every railroad company engaged in interstate and foreign commerce shall be required, after a certain date, to take out a national charter, just as they might be required, after a certain date, to take out a national license. There are several reasons which induce us to make that proposal; one is that if you adopt a system of Federal incorporation, you must seek to rest your constitutional authority on one or all of several powers, the power to establish post-offices and post-roads, the power to provide for the national defense, and on the commerce power.

The Power to Regulate Commerce is the Basis upon Which to Sustain Compulsory Federal Incorporation.

We know that wherever the question has been presented to the United States Supreme Court of a national incorporation, an effort has been made to rest it on all three of those powers, but the court has always singled out the commerce power to sustain the incorporation. Where it would go under these other powers is as yet an unknown problem. We do know that the Supreme Court recognizes the commerce power as a sufficient basis for a national incorporation.

Now, let us take that power. That power is to regulate interstate and foreign commerce. There must be a fundamental idea underlying the term "regulate." There can be no regulation which may or may not be accepted by the person regulated or the interest regulated. It is fundamental

to the idea of regulation that it shall be binding. No man can regulate me if he leaves me free to accept or reject the regulation. I am still unregulated, whatever he may call it, and, therefore, for a system of incorporation to be a regulation it must be compulsory. It cannot be left to election of the railroads to be regulated, whether or not they will accept that rule of regulation.

We think that is a most important conception of this matter, not only important because of its constitutional relation—its relation to the Constitution—but important from a practical standpoint.

Reasons Why Federal Incorporation Must be Compulsory.

Let us suppose a case of an elective system of incorporation and of some railroad coming in under an elective system, electing to come in under it, and this point was made in some fundamental matter which might affect that railroad, that it is not regulation at all if it is not compulsory, and it should be determined by the Supreme Court that a regulation to be a regulation must be binding, what would be the condition of that railroad, having gone out from under its State charter and having accepted an election to go under a United States charter, and that whole system upturned by the Supreme Court of the United States because it was not a regulation of commerce at all?

Nor do we think that this situation is met by the fact that in all charters which Congress has granted there has been an election on the part of the persons to whom it was granted to accept or reject it. We think that that situation differs fundamentally from the situation with which we are dealing. I will take the charter of the North River Bridge across the Hudson River, which was granted some years ago by Congress, and which went up to the Supreme Court of the United States and is reported in 153 U. S. There Congress passed upon the desirability of that individual enterprise, the crossing of the North River at the points indicated in the charter, and said that that special

thing, that special construction, that special facility, would promote commerce. And so in every other charter which has been granted, and which was subject to acceptance or rejection, Congress has there undertaken to pass upon individual enterprises which were helpful or not helpful to commerce. But suppose we are dealing with everything in the country; suppose we are not dealing with facilities which Congress passes on as helpful or not helpful, but have come to deal with a system—merely come to deal with a system of regulation which will apply not only in approved cases, in existing cases, but in all cases, we come then to base our proposition upon a system of national incorporation, wherever it may apply, and to apply everywhere. In that case the thing that Congress passes on is the desirability of the system and not the desirability of the individual enterprise which it approves. It does not undertake to endorse this bridge across the North River. It does not undertake to endorse the charter of the Union Pacific Railroad, but it undertakes to abandon the individual enterprise and apply its adoption of a rule of regulation to the system of incorporation or non-incorporation.

So we say that the cases radically differ, and that the principles which would sustain the elective charter with respect to a special thing cannot be relied upon to sustain an elective system of incorporation universally applicable, not only to existing railroads, but to any that may be built in the future. And so we believe that speaking from the constitutional standpoint, it is necessary to the soundness of the system of incorporation that it shall be compulsory and not elective.

But we are also influenced in our recommendation for a system of compulsory incorporation by the practical consideration that Congress will not likely be willing to say to all the railroads discontented with their State charters, "Here is a national refuge for you," but to all those who have specially favorable relations under the existing State charters, "You can stay where it is better for you." We

think, too, that Congress will not say to the railroads, "Those who prefer the national incorporation can have it while those who have special refuge under the powers of any of the States can retain that." We believe that if Congress adopts a system of incorporation at all it will make it uniform and will not permit this power of election between the various railroads of the country.

The Report of the Committee of the National Association of Railroad Commissioners Favors Federal Incorporation.

Now, gentlemen, this idea of incorporation has grown in this country. I have in my hand a report of the Committee of the National Association of Railroad Commissioners, composed, I believe, of all the Commissioners of all the States, as well as of the Commissioners of the United States. They referred this matter to one of their committees. I assume it was done a year ago; I do not know. But within the last week a report has been made by that committee. It is true that the Association has not passed upon the report. It has put it over for another year, but the report has been made. It has been made by the State Commissioners. It is unequivocal in its terms and is an expression by them of the necessity for a system of national incorporation. I will read a summary of their conclusions:

"In conclusion we herewith summarize our views and present the following recommendations:

"First. That the Interstate Commerce Commission be given the power to regulate the stocks and bonds of the interstate carriers;

"Second. That the Interstate Commerce Commission or some other Federal agency, be empowered to regulate the rates, practices, stocks, and bonds of the interstate public utilities;

"Third. That Congress enact the necessary legislation to provide for a national incorporation act for interstate railroads, and interstate public utilities;

"Fourth. That the Interstate Commerce Commission be empowered to exercise jurisdiction over mergers,

consolidations and encumbrances of interstate railroads;

"Fifth. That the Interstate Commerce Commission be given authority to exercise jurisdiction in receivership proceedings preferably to the fullest extent, but at least over all matters relating to capitalization.

"Sixth. That Federal and state statutes be amended, where necessary, to permit of issues by railroads and public utilities of a common stock without par value;

"Seventh. That the Interstate Commerce Commission and the public utility commissions be permitted to invoke the aid of the Federal Trade Commission to determine the reasonableness of cost of essential materials of railroad and public utility construction;

"Eighth. That adequate legislation be enacted, both national and state, to provide for voluntary wage agreements, methods of arbitration, and for Federal and state intervention in emergencies, to adjust wage conditions in the railroad and public utility service; nothing contained in such legislation to require men to work against their will;

"Ninth. That such legislation as is consistent with public interests be enacted for the enhancement of railroad credit and for the protection of American railroads against competition in the American market for funds for private exploitation in foreign countries;

"Tenth. That a new committee be appointed by this Association to study the question of the relationship between the Government and the railroads, to consider the possibilities of co-operation between the government and the railroads, and report to this Association at its next annual meeting.

"(Signed) EDWIN O. EDGERTON, *Chairman*.

(of Cal.)

"JOHN F. SHAUGHNESSY,

(of Nevada).

"WILLIAM C. BLISS,

(of R. I.)

"PAUL B. TRAMMEL,

(of Georgia).

"CLYDE B. AITCHISON."

"Mr. Aitchison concurred in part.

"Joins for the purpose of bringing the report before the Convention.

"I concur in the recommendation for Federal control of the issuance of railway securities.

"(Signed) JUDSON C. CLEMENTS."

Now, gentlemen, we cannot ignore such testimony as that. Whatever may be done by that Commission at a future meeting—I mean, by those Commissioners at a future meeting, here is a report of their committee, made after a year's study, as I suppose, in which they endorse as a national necessity the idea of national incorporation.

The CHAIRMAN: Was there any dissent to that report?

Mr. THOM: Only such as I have read. One of the Commissioners said that he concurred in part, but he did not say in which part.

Mr. ADAMSON: Is there any explanation as to why it was not adopted by the convention?

Mr. THOM: I have not any, sir.

Mr. ADAMSON: I thought perhaps the context would afford some.

Mr. THOM: No; I think not. We think that a mighty truth was dawning on those gentlemen.

Mr. ADAMSON: But it seems it did not spread over the convention. That is what I am inquiring about.

Mr. THOM: No. Truth does not always spread at once, but it started out and is on the way.

Mr. ADAMSON: Some of them may have attained your constitutional view about the Federal incorporation.

Mr. THOM: I hope they did, because there could not be a sounder one, in my judgment.

Mr. ADAMSON: I have more confidence in that thing than in anything you have read.

Mr. THOM: I will have something else to read to you on that subject before I have concluded my argument.

Now, that, in brief, is the suggestion we shall make to this committee on the subject of incorporation.

No Claim that Federal Incorporation is a Panacea.

Our third suggestion would be—but before arriving at that third suggestion, I wish to state that I do not, for a moment, contend that this railroad problem will have its panacea by the mere concentration of authority in the hands of the National Government. It will be helped; it will be simplified; it will be robbed of a great many of its dangers, but there still remains an unsolved problem. It will be necessary, in addition to that, to perfect, to strengthen, and to reorganize the principles of Federal regulation. The object of getting it into the hands of one body is to have it where its processes can be readily controlled and readily perfected, so as to work up to a real solution of this problem.

Railroads Not Asking for Increase of Rates—Only Perfection of System of Regulation.

And I want, just here, to digress to say that if all we propose is done, there will not be, by virtue of that act alone, a single cent of additional revenue brought to us. We are not asking this committee or asking Congress to pass upon the sufficiency of our revenues; we are not asking them by act or by any act that you shall recommend, or that Congress shall pass, to increase our revenues. We are simply asking that you shall perfect machinery that can readily and adequately respond to a condition which, in the public interest, will require an addition to our revenues. We are asking for the perfection of a system that will take into consideration what at any time we need in the public interest, and which will be wise enough and independent enough to pass on that question in the way the public interest requires. So that any effort to make this a rate hearing ought not to be entertained, because we are asking nothing here in respect to rates; we are asking only a perfection of the system which shall pass upon that and every other matter which concerns

the efficiency of these instrumentalities up to the standard of the public requirement.

**Organization of the Interstate Commerce Commission
Should be Changed and a Federal Railroad Commission
Should be Established.**

Now, passing to the Interstate Commerce Commission, we shall ask you to favorably consider this as the third proposal:

The Interstate Commerce Commission has, under existing law, too much to do, and is, consequently, forced to confide to subordinates important functions which the regulating body ought to be in a position to perform itself. The Interstate Commerce Commission is likewise clothed with different functions which are inconsistent, and which violate the principle that the legislative, executive, and judicial departments shall be kept separate and distinct. To reduce the pressure upon the Interstate Commerce Commission and to separate these inconsistent functions, there should be withdrawn from the Interstate Commerce Commission all duties except those which are judicial and constructive, such as the power over rates and routes, the powers affecting the revenues of carriers, and the remaining duties, being mainly those of supervision, detection, prosecution, and correction, should be conferred upon a new commission, which may be named, for convenience, "The Federal Railroad Commission." In order to coordinate and harmonize the system of regulation, the Interstate Commerce Commission should be made the supreme regulating body, and should have the right of review of any order made by the Federal Railroad Commission. The salaries of the members of the Interstate Commerce Commission should be increased, and their terms of office extended. The salaries of the members of the Federal Railroad Commission, who should be appointed by the President and confirmed by the Senate, should also be made adequate, and they should be given a long term.

Regional Commissions Should be Established.

Regional commissions should be established, which should assist the Interstate Commerce Commission in exercising its jurisdiction, and, to that end, should make all such investigations and hear and determine all such complaints, and perform such other duties as the Interstate Commerce Commission may, from time to time, by general or special order direct. The members of these regional commissions should be Presidential appointees, at adequate salaries, and for long terms. The orders of the regional commissions should not become effective until approved by the Interstate Commerce Commission, but should stand approved, as of course, unless excepted to within a time to be limited. The regions should be created with reference to lines and systems of transportation, and need not be defined geographically. Each regional commission should be located at such place in its district as the Interstate Commerce Commission directs; but it should be authorized to hold its sessions and perform its duties in any other district, when so directed by the Interstate Commerce Commission.

Foundation of Our National Liberties Violated in the Present Organization of the Interstate Commerce Commission.

This proposal has to do with the reorganization of the Federal system of commission. The foundation of our national liberties is the separation of what are termed the inconsistent functions of government. You have one judicial department; you have one executive department, which is not judicial and not legislative; you have one legislative department, which is not judicial and which is not executive. The ideal of free government is that those functions shall be kept distinct from one another. It was thought that if a legislator should be a judge, there would be no use for a judge, because he would sustain his acts as a legislator, and

so with these other functions; in order to be useful, each department must be protected from the invasion of the other. And yet we find that wholesome governmental principle is violated in the present organization of the Interstate Commerce Commission. They are judges; they are, in a measure, legislators, and they are administrators of the system of regulation. We feel, as long as men are human that they will go to the exercise of one of these functions influenced by the functions that they are performing in another one of their duties. We think that, if there is a question, constructive in its character, relating to all the railroads, it is unfortunate for that question to be determined in an atmosphere which has been created by having that commission walk out of the next room, where it has been investigating what is said about the Alton and the Rock Island and the Frisco railroads; we feel that human nature cannot leave in the adjoining room the impressions which they have got in the exercise of their detective, corrective and punitive functions, and come helpfully to the consideration of matters which go to the very vitals of the whole system of transportation. We feel that men ought to exercise one of those functions who do not exercise the other, and, as the matter of building up the system of transportation in this country is of the first and most fundamental importance to the country and to the public, the men having it in charge ought not to be embarrassed, ought not to be limited, ought not to be influenced by any abuse which they have found in some single road; and yet, in the nature of things, all these things that are wrong are spread over all of the railroads of the country,—guilty or innocent.

Now, bear in mind that I am not asking you in any way to surrender any part of your corrective jurisdiction; I am not advocating your taking away from the regulating bodies any part of the power they have to correct abuses; but I am advocating a system which will prevent the great good that will come to the people from a successful system of trans-

portation, being in any way affected or obscured by the inconsistent functions of the body that does the regulating.

Regional Commissions Will Bring Regulation Close to Local Needs.

Now, as to regional commissions: We think that there is a sound underlying support for the popular desire that government shall be brought close to their home. We believe that if you take the power to make State rates, and put it in the hands of your national authority, there will be increased reason for bringing your system of regulation to the doors of the people, so that their needs, their aspirations and their commercial conditions shall be considered and shall be passed on by men resident among them.

We think, however, that that deference to local wants, that consideration for local conditions, ought not to destroy a co-ordinated regulation, but, while there is just interest of localities to have their needs appreciated, there is also a just demand on the part of localities that they shall do their commerce on terms equal to the terms which are granted to any other people anywhere in this country. And that in consequence these regional commissions ought to be established in these transportation regions, ought to live there, ought to hold their sessions there, ought to take their evidence there, ought to reflect everything that is sound in local atmosphere, and yet that a local view, a local treatment of one part of commerce should be prevented by requiring them to report to the Interstate Commerce Commission, which could co-ordinate the regulation of commerce in all parts of this country and see that it is impartial.

The functions under our suggestion of these regional commissions would be like the functions of masters in chancery, who take the evidence and make the report, and the report lies subject to exception. The exceptions only are argued before the court. The exceptions under our suggestions would be the only thing argued before the Interstate

Commerce Commission, unless in a special case they should direct otherwise. This would take from the Interstate Commerce Commission an immense burden of work and would concentrate the controverted matters on those that the two parties agreed were to be controverted by having an exception filed. In that way the commerce of this country could depend for its original consideration on men of the dignity and ability that would be appointed by the President and confirmed by the Senate. And the commercial interests of this country would then not be dependent upon examiners, who are low-salaried officers, but in all matters of controversies they could, by operation of law and by right of the statute, go to the Commission on these exceptions and argue the matter before it.

Commission Should Have Power to Prescribe Minimum Rates.

Our next proposal will be that the power of the Interstate Commerce Commission over rates should be extended, so as to authorize it to prescribe minimum rates, in addition to its present power to prescribe maximum rates. And it should also be given the additional power to determine the relations of rates or differentials whenever necessary or appropriate to establish or maintain a rate structure or a relation or a differential found to be just and proper by the Interstate Commerce Commission.

I hope it is apparent from the argument I have so far presented that the public have as deep an interest in having the revenues of these carriers adequate to the furnishing of an efficient and sufficient public service as the carriers have. The public depending on any special railroad cannot with equanimity view a situation where the revenues of that road are so inadequate as to affect the standards of the public service that the people are getting there. There is as distinct a public interest, I repeat, in the community to have the revenues of the carriers sufficient to guarantee a proper

service as any interest the carriers may have, and greater, because public interests are always greater than private interests.

Moreover, here is a community served by a railroad, which does its business with a great market; here is another community served by a different railroad doing its business in the same market. It is of vital importance to justice in commerce that the terms on which those two communities can reach that market should be equal. If it is in the power of one of the roads to give to its communities terms which will be temporarily advantageous, lower than the other road will give to the communities it serves, then there is an inequality of commercial opportunity which is indefensible.

As long as the minimum rate is not regulated by government the two conditions will follow; one is that the struggling railroad, which is anxious to keep its head above water, will be at times willing to depress its rates, so as to attract a temporary business, and thereby deplete its opportunity for a continuous and permanent and a reliable service to the communities which it serves. That is one of the consequences. The other consequence is that unless the minimum rate is regulated it is in the power of these two railroads to give different commercial opportunities to the communities they serve. Now we believe that any righteous situation ought to take hold of that minimum rate and control it in the public interest just as much as the maximum rate; that it ought to be able to say whether or not one community on one railroad is to receive commercial opportunities which are denied to a community on another railroad, and that it ought to be able to say, "If you are going to take charge of the instrumentality of interstate commerce and make it efficient for the needs of all the people, you ought to be able to say that its revenues shall not be depleted unjustifiably and unreasonably by making the rates too low, so that the result is simply a depletion of revenues at the same time that it produces inequality of commercial opportunity."

Principles Which Should Govern the Interstate Commerce Commission in Fixing Rates.

In our fifth proposition we attempt to have introduced the principles of protection to these carriers, the principle of the protection and maintenance of their credit by prescribing some of the things that the Interstate Commerce Commission must take into consideration when it fixes the rates of the carriers. Number 5 is as follows:

It should be made the duty of the Interstate Commerce Commission in the exercise of its powers to fix reasonable rates, to so adjust these rates that they shall be just at once to the public and to the carriers. To that end, and as a means of properly safeguarding the credit of the carriers, of protecting the just rights of the owners and of providing a basis for additional facilities from time to time as the needs of commerce may require, the Interstate Commerce Commission should be required, in ascertaining and determining what is a reasonable rate for any service, to take into account and duly consider the value of the service, the rights of the passengers, shippers, and owners of the property transported, the expenses incidental to the maintenance and operation of the carrier's property, the rights and the interests of the stockholders and creditors of the corporation, the necessity for the maintenance in the public service of efficient means of transportation, and for the establishment from time to time of additional facilities and increased service, and in addition thereto any other considerations pertinent to be considered in arriving at a just conclusion.

That is part of No. 5. I will read the balance in a moment.

The purpose that we have in view in presenting that as a recommendation is to secure a legislative mandate to the regulating body that there are certain things essential in the public interest, among them a principle, among them is the establishment of adequate railroad facilities and the

assurance that those facilities will grow as commerce grows and the public needs increase. That they shall take that as one of their guiding principles in exercising their function of rate-making. That they shall realize that they are deputed by Congress as an instrumentality of government, charged with the responsibility of seeing that the instrumentalities of Congress are made and kept as efficient as the public interest requires. We say that cannot be done without having reference to the credit of the carriers, and therefore in fixing their principles of rate-making they must have due reference to the kind of credit, that the public interests require that the carrier should have a properly fixed revenue with reference to that as one of the standards.

We say further that, as the public is interested in the matter of the net return, in the encouragement to capital, in the provision of a surplus in prosperous years to meet the efflux in lean years, that there should be a legislative mandate that the expenses to which the carrier must submit in the way of providing this public service must be taken into consideration when you fix the amount of their revenues, and thus protect the net in which the public is interested as much, or to a greater extent even than the carriers themselves. I saw as much or more, because the carriers at last, when they are unable to do these things that the public interests require, have at least the refuge of having the Government buy the properties and take over the burden itself, whereas the public must meet the problem of sufficient transportation facilities, either under a system of private ownership or under a system of Government ownership.

Power of Commission to Suspend Rates Should be Limited to Sixty Days.

The remaining part of No. 5 is this: "The power of the Commission to suspend rates, should be confined to 60 days from the date the tariff is filed. If the Commission is not

able within this time limit to reach a conclusion, the rate should, at the expiration of that time, be allowed to go into effect with appropriate provision for reparation, for the period not exceeding one year, in case the rate should subsequently be declared to be unreasonably high."

I have no doubt that that clause will give rise to considerable difference of opinion, but we believe that that can be sustained by the measure of the public interest, like the other matters that we have suggested. Always remember that the greatest public interest is in facilities. Always remember that the greatest public interest is in the assurance of the continuance of the carrying on of commerce. Now, suppose that the present provision in regard to suspension of these rates for ten months should continue, and let us take the case, first, where at the expiration of ten months it is found that the proposed rate is a just one and should have been put in effect from the beginning. The first consequence of that is that for the period of ten months the carrier has been deprived of a legitimate earning of a legitimate income. There is no power on earth to give that to it again. It is gone—it is irretrievably gone. Now, under the supposition that it was entitled to it from the start, the loss to it must be felt in some direction. It must be felt either in some other part of the traffic bearing the burden which ought to be shifted to this, which violated the principle of equality among the patrons of the railroad, or if it cannot be shifted to some other class of that traffic, it means an impaired capacity on the part of the carriers to meet the public needs in regard to facilities. It puts the public short somewhere, either by transfer onto some other part of the public of a burden which ought to be borne by this traffic, or by depriving the public of a proper basis for additional facilities, or for adequate service, which is their prime need and to which they are, as a fundamental matter, entitled. Now, this is the case of where the suspended rate is found to have been a reasonable rate, from the beginning. Now,

let us take the other case, the case where it is found that the rate proposed is an unreasonable rate and ought not to be allowed. In that event, our proposal is that we shall keep our books in such a way that where we have charged during that period from the very beginning, more than we are entitled to charge, that we should be in a position to make the refund to the shipper that has been overcharged. It is impossible, if you suspend for ten months and the rate is a reasonable rate, to repay us. It is not impossible, if you suspend for 60 days and the rate is declared to be unreasonable, for us to repay the shippers. We take the view that that is the most equitable method of dealing with that question of suspension, and we take the view that that is the method of dealing with it which is best in the public interest.

Commission Should Regulate Rates for Carrying the Mails.

The sixth proposal that we shall make is: "That the Interstate Commerce Commission should be vested with the power and it should be made its duty to provide, upon the application of the Postmaster General or any interstate carrier, reasonable rates for all services and facilities connected with the carrying of the United States mail."

That proposal is so clear and the whole subject is so much in the minds of Congress at this time, that it is unnecessary for me to enlarge upon it now.

Federal Government Should Have Exclusive Power to Regulate Securities.

Our seventh proposal is:

"There should be in the Federal Government the exclusive governmental power to supervise the issue of stocks and bonds, by railroad carriers engaged in interstate and foreign commerce."

I have argued that proposal at length during the remarks which I have had the honor to submit, and, therefore, it is unnecessary now for me to detain you at this period of the discussion with any elaboration of it.

Anti-trust Laws Should be Modified to Meet Transportation Conditions.

Eighth:

"The law should recognize the essential difference between the things which restrain trade, in the case of ordinary mercantile concerns, and those which restrain trade in the case of common carriers. While the question of competition may be a fair criterion in the case of ordinary mercantile concerns, it is not a fair criterion in the case of common carriers. In the case of carriers the test should be whether common ownership or control promotes trade and commerce, by affording facilities for the interchange of traffic, or by supplementing facilities for transportation, to a substantial or greater extent than such common ownership or control restrains trade by suppression of competition."

You gentlemen will appreciate that no railroads can cross each other, can closely approximate each other, without crossing, or can form one continuous, straight line, without there being competition between them. When they cross, there is an area around the point of intersection, which can get to the markets of the world over either one of them. When they closely approximate each other, coming close enough for traffic to be delivered to one or the other, then, within that region where a common service or common public service exists, there is competition, because the commerce in that zone can reach the markets of the world over either. Where railroads meet in a city, and one goes out due north and the other goes out due south, their connections are such that a market anywhere can be reached by commerce taking either one of those railroads. So that there is a necessity

of competition in respect to the railroad business at these points to which I allude, which does not exist in mercantile concerns. Moreover, those two railroads that meet, end on, or that are so situated towards each other as to furnish an available means of carrying forward on the one railroad the traffic originating on the other, they so supplement each other in the facilities of transportation that the service they render as connections is vastly greater than the competition which exists at the point at which they meet. The facility of having commerce pass uninterrupted from one of these connecting railroads to the other, is a valuable facility where it is a natural condition, and when we come to ask what the public interest is, we must necessarily balance what these two railroads do in the way of suppressing competition, against the advantage they offer in the way of supplementing transportation.

Now, we say, therefore, that that is a matter plainly demonstrable in the public interest, and that that is a test plainly applicable to the laws which should be made to apply to them.

What is the greater public interest? Is the greater public interest to keep its rates separate because there is some competition suppressed, or is it in the public interest to have those railroads unite because they are naturally supplementary to each other and they furnish additional and needed public facilities?

Now, we believe that the determination of that question ought to be put into the hands of the Interstate Commerce Commission and that they ought to be required to determine it on the principles which I have stated, of public interest as shown by supplemented and improved facilities on the one side, or by the suppressing of competition on the other. We say more than that, that this matter of suppressing competition, of restraining trade, of enforcing hard and burdensome terms of transportation, is taken out of the hands of these carriers because you regulate them by your public bodies. The reason for your anti-trust laws in re-

spect to other mercantile matters is because of the hardship that great combinations may put upon the people. At least, as to the terms of transportation it is impossible to put hardships upon the public, because those terms are prescribed by public authority. Of course there is still the question of service. That matter would have to be determined by the Interstate Commerce Commission as one of the elements of determining what the public interest is. But when you have applied to the affairs of the railroads the strong regulating power of one of the departments of government, the same conditions do not apply to that; the public is not menaced by the same dangers in respect to that as it is by an entirely unregulated private business, and these essential differences, we think, ought to be recognized in the system of regulation which you will adopt.

Agreements in Respect to Rate Practices Should be Permitted Subject to Approval of Interstate Commerce Commission.

"9. The law should expressly provide for the meeting and agreement of traffic or other officers of railroads in respect to rate practices. This should, however, be safeguarded by requiring the agreement to be filed with the Interstate Commerce Commission and to be subject to be disapproved by it."

Now, gentlemen, no man acquainted with railroads, with the necessity for them to make joint rates and through routes, can for a moment doubt the absolute necessity for the authorities of the two roads to meet and agree upon the joint rate and the through route. There can be no such thing as a joint rate and a through route without agreement, unless made by law, by the authority of the Interstate Commerce Commission. The law requires that to be done by the voluntary action of the carriers. It is impossible to have that voluntary action unless they can meet and agree. But the

interest of the public does not end there. The interest of the public is equality of terms of doing business. When two railroads serve the same market, when two railroads tap the same producing territory, there is a valuable interest on the part of the public that those whom the railroads serve shall have equality of terms. The philosophy of that principle of transportation is universally recognized even by the regulating authorities, and in order to have the equality of terms the traffic officers are obliged to meet and to make known to each other what the terms are. Of course you appreciate that an unrestricted power of agreement may open the doors to abuses, but our proposition is that all these abuses and opportunities for abuses, can be obviated by requiring these agreements to be filed with the Interstate Commerce Commission before they shall become valid, and be subject to be disapproved by that body. I make a difference between subjects to be disapproved and subjects to be approved because the time for approval means delay; whereas the power of disapproval is a power sufficient to meet the chance of abuse. I believe you will find, if you ask the Interstate Commerce Commissioners, that such an arrangement with regard to the meeting of the traffic officers is in their opinion essential to the carrying on of business in a fair and equitable way between various communities.

Why No Suggestion Made About the Labor Situation.

Now, gentlemen, I have not included in the proposals which we shall make to you any suggestions on the labor question. All these things that I have read were agreed upon by us before this labor situation became such a menace to the commerce of the country. When we prepared for these hearings we did not expect to introduce that subject, notwithstanding its importance, because of its hotly contested character. It may be that recent events have put the labor controversy in such a situation that Congress will have to confront it and to deal with it. Whether that will be done by

this committee or by some other committee of Congress, we are not advised. Therefore, for the present, I shall make no suggestions in respect to the labor situation because it seems to me that that situation ought to be met when it arises, and after proper opportunity for exchange of views in regard to various proposals.

Railroad's Case Has Now Been Stated Fully and Frankly.

I have now, then, gentlemen, laid before you with the frankness which this great situation demands, and with the frankness with which I attempt to treat every public subject with which I come in contact, so that you may know entirely the views that we entertain and the proposals that we shall make, and so that witnesses who shall appear here will have the full benefit of the things which we think are wise to be done by this Congress. It may be that in the light of what shall be developed before you we shall take a different view on some of these questions. I do not anticipate that, but we can at least assure this committee that we will approach any suggestion which is made from any source with an open mind and always with a purpose to have it determined by the standards of the public interest which we have asked to be applied to all the proposals that we ourselves have made.

Views of Richard Olney.

I now come to a part of my presentation which is a matter of profoundest interest to me. I come to present to you the views of a man occupying a position of supreme authority with the American people. He has lived a long life. He has ornamented and led, and still ornaments and leads, the American bar. He has held high office from which he retired with an untarnished name and with a reputation established and safe in American history. He entertains the democratic view of the rights of the State. He occupies no

position of a professional or other character to this investigation except the position and the character of an eminent American citizen. It has been impossible to induce him to leave the honorable retirement into which he went by even the offer of the ambassadorship to the Court of St. James, which I understand was recently made to him. He stands out before the American people as a great lawyer, a great democrat, and a man who occupied with distinguished credit to himself and benefit to the people, the offices of Attorney General and Secretary of State in Mr. Cleveland's Cabinet. I refer to Mr. Richard Olney. Unfortunately, his condition of health does not permit him to appear before this committee, but I have from him this letter:

"BOSTON, 23 November, 1916.

"Alfred P. Thom, Esq., Counsel, Railway Executives'
Advisory Committee, 1360 Pennsylvania Avenue
N. W., Washington, D. C.

"MY DEAR MR. THOM: For reasons you are familiar with, it is quite impracticable for me to appear before the Congressional Committee at Washington for the purpose of expressing my opinion as to the desirability, perhaps I should say necessity, of the National Government proceeding without delay to insist upon national railroads being owned and operated by national corporations.

"But if my opinion is of any value, I believe it will not lose but gain if stated in writing rather than by word of mouth. The enclosed 'Memorandum' is an attempt to put the matter in a little more orderly shape than I have put it heretofore. You are of course at liberty to make whatever use of it will serve the object you have in view in which personally I thoroughly believe.

"Very truly yours,
(Signed) RICHARD OLNEY."

The memorandum reads as follows:

"MEMORANDUM.

"1. For all the purposes and functions of commerce between the States of the United States, between such States and the Territories of the United States, and between such States and Territories on the one hand and foreign nations on the other, the United States is one country, with complete and exclusive jurisdiction over the whole subject—and State lines and jurisdictions are without significance.

"2. Commerce, in the constitutional sense, covers transportation and intercourse in all forms and whether existing when the constitution was adopted or since introduced and practiced.

"3. The national commerce power, being of such extent and exclusiveness, necessarily subjects to national regulation and control all the agencies and instrumentalities by which national commerce is carried on.

"4. It cannot be doubted that a railroad corporation created by a national charter is an apt instrument for the carrying on of national transportation and that the organization of such a corporation with all appropriate powers and duties is a fit subject for treatment under the commerce power.

"5. Nor is it to be doubted—because ample experience has shown—that, in this matter of national transportation by railroads, public policy and the public welfare are at one with the law of the country. They imperatively require that the subject should be dealt with in all its phases by a single authority which can be no other than the nation itself. The mixed jurisdiction over the subject now prevailing—the States exercising a part mostly through State charters and the United States a part mostly through the commerce power—is thoroughly archaic, originated before the true scope of the commerce power was generally understood, and has resulted in a serious waste and inefficiency in railroad operation which is at once matter of public notoriety and public scandal.

"6. In view of the settled law of the land as respects the national commerce power—as by virtue of it the United States practically undertakes to exer-

cise the power for the benefit of the several States and of all the people—and as transportation by railroad is within that power and is today in a condition most unsatisfactory to the private owners of railroads as well as seriously prejudicial to the national interests—the question is of the remedy for that condition.

“It may be claimed that government ownership of all national railroads is the only true and adequate solution, a claim which time and sufficient experiment may show to be well founded. Yet government ownership would have political bearings of such pith and moment as ought to prevent its consideration until and unless it is established that there is no other way out. It is best to assume in the first instance, therefore, that there is some other way out; that the question is essentially administrative rather than political; that it concerns our national housekeeping rather than the structure and stability of the house itself.

“7. If the correctness of the foregoing premises be assured, and if it be also conceded, as apparently it must be, that national control of national transportation by railroad can be secured in the most simple, direct, and effective manner by requiring all parties who undertake it to take out national corporate charters, the real and practical question is one of procedure.

“How shall the United States rid itself of the present order of things and substitute the desired new one—how eliminate any present State control of national transportation by railroad and substitute for it exclusive national control, through national incorporation of the parties undertaking to carry on such transportation. Congress, of course, must enact necessary and appropriate legislation. What must be its essential features?

“8. The practical situation is complicated and difficult because as a whole the interstate commerce railroads of the country are today owned and operated by State corporations under State charters. Thus (apart from the general public) the parties interested in the displacement of State railroad corporations now doing a national commerce business by national

corporations are *first* the States granting the existing charters, and *second*, the stockholders and creditors of such State corporations. If the assent of these several parties could be counted upon, the change from the present status to absolute national control of national transportation by railroads through the medium of railroad corporations with national charters would be easy. But such assent for obvious reasons is not to be taken for granted and the question is how shall the United States proceed to accomplish the desired result without such assent.

“(a) To consider *first* the right of the States and the State corporations—each has granted franchises enabling a railroad corporation of the State by the use of them independently or in connection with franchises granted by another State or States to operate a national railroad. The franchises have been accepted so that there is an apparent duty on the part of the grantee to execute them and an apparent right of the grantor to insist upon their execution. If the right and duty were real, only the power of eminent domain could take away the grantor’s right to claim full performance or impair the grantee’s duty to make such performance. But on the legal grounds already developed a State grant to a State corporation of the franchise to operate a national railroad must be regarded either as void *ab initio* or as provisional merely and as becoming void whenever the National Government acts upon the subject. Consequently, neither that State nor the State corporation would be legally aggrieved if a grant to a State corporation of the franchise to operate a national railroad were annulled by a grant by the National Government of an identical franchise to a national corporation.

“(b) Such being the settled law of the land as respects the national commerce power and its application to national transportation by railroad, it is not only the right, but the duty of the United States to exercise the power if the national welfare demands it. In various instances the National Government has by inaction acquiesced in the exercise of State authority over matters exclusively within the national jurisdiction. In such cases the theory of the courts

has been that State action should not be invalidated so long as the National Government continued to impliedly approve of it, while the policy of the National Government has been thought to be justified by the view that State action on the subjects concerned would be likely to be more intelligent and effective than action by the nation. So far as national transportation by railroad is concerned, however, no questions of that sort need be discussed. Its unsatisfactory condition is admitted on all hands—is bitterly complained of by the private owners of railroads and is notoriously prejudicial to the national interests—so that the clearest possible case exists for the affirmative use by the National Government of its acknowledged power over the whole national railroad situation.

“(c) Feasible and adequate legislation for putting a national railroad now operated by a State corporation into the possession and control of a national corporation must not only authorize the latter to operate such road, but should also provide the ways and means by which the new corporation shall succeed to and acquire the tangible railroad property essential to and actually in use in the operation of such road.

“Such property—the entire railroad plant, including road-bed, rails, stations, shops, telegraph, and telephone equipment, and all other railroad property and appliances employed in the operation of the national railroad concerned—should pass from the old State corporation to the new national corporation as a unit—as a going concern. It cannot be thus conveyed to the new corporation by the United States because the United States does not own it. It belongs to the old corporation and its stockholders, whose ownership is absolute except so far as their creditors may have claims on it, and neither owners nor creditors can be deprived of their interests in it except by their assent or through an appropriate exercise of the power of eminent domain.

“(d) Congressional legislation aiming to substitute national corporations for State corporations in the control and operation of national railroads would obviously be ineffective if conditioned upon the consent of all parties in interest.

"It follows—unless the suggestions above made are unsound—that a national statute for the displacement of a State corporation by a national corporation as the owner of a national railroad should cover the following points:

"First. Incorporation of certain designated persons with powers to acquire, hold, and manage all the franchises and property of the old corporation and with power to dispose of the capital stock of the new corporation as hereinafter indicated;

"Second. Amount of capital stock to be same as that of old corporation except that the organizers in their discretion may make the amount larger or smaller;

"Third. Debts and obligations of old corporation to be assumed by the new with recognition of any liens and priorities of creditors already acquired as against assets of the old;

"Fourth. Stockholders of the old corporation, common or preferred, to be offered common or preferred shares or such other interests in the new corporation as, in the judgment of the organizers, will make their interests in the new equivalent to their interests in the old;

"Fifth. Shares in the old corporation to be purchasable for the new corporation by the organizers on terms which they may deem fair and not injurious to other parties to the proposed organization—in the event of any such purchase shares of the new corporation to be sold by the organizers to an amount sufficient to enable them to pay the agreed price;

"Sixth. Shares of the old corporation not obtainable by exchange or purchase as above provided to be taken by the new corporation at its option under the power of eminent domain at a price fixed by a court of competent jurisdiction or by such court and a jury at the election of the stockholder;

"Seventh. The organizers to operate the national railroad concerned with all the powers of receivers of an insolvent railroad until a majority of the capital stock of the new corporation shall have been issued as hereinbefore authorized. Upon that taking place, the organizers shall call a meeting of stockholders for

the election of directors, who, in addition to the powers of railroad directors generally, shall have the special powers of the organizers so far as the exercise of the same is necessary to fully accomplish the purposes of the charter.

"The foregoing list is not claimed to be exclusive. But it is confidently believed that each one of them is a necessary part of any effective plan by which a national railroad corporation is to be substituted for a State corporation in the ownership and operation of a national railroad."

With a deference almost too great for expression, I must say that I am in complete agreement with all of that memorandum except as to the method necessary for the transfer of the State corporation to the national one. I am convinced, as to the latter, that a method much simpler is entirely available to accomplish this transfer, and, at the proper time, I shall ask an opportunity to develop that view before this committee. I feel that Mr. Olney has performed a great public service in contributing that thought to the solution of the immense problem which is before you.

Conclusion.

I have tried, Mr. Chairman and gentlemen, to state with complete frankness the views which actuate us when we come to a consideration of this immense problem of transportation. I am profoundly grateful to you for the courtesy you have extended me and for the consideration you have shown during the tedious hours during which I have been obliged to ask your attention, and I now respectfully announce that the opening statement which I was delegated to make has been concluded.

Senator UNDERWOOD: Mr. Chairman, I suppose the committee desires to cross-examine Mr. Thom, but it is one o'clock and Saturday, and I move we adjourn now.

Mr. ADAMSON: Let us have an executive session.

Senator UNDERWOOD: Do we want an executive session?

Mr. ADAMSON: I think we do.

Senator UNDERWOOD: Then I move an executive session.

Mr. CULLOP: Before we go into executive session is it understood Mr. Thom is to appear Monday for cross-examination at the opening of the session?

The CHAIRMAN: It is so understood.

(The motion was agreed to, and at 1:00 o'clock p. m. the committee went into the consideration of executive business, at the conclusion of which an adjournment was taken until Monday, November 27, 1916, at 10:30 o'clock a. m.)

MONDAY, November 27, 1916.

The Joint Committee met at 10:30 o'clock a. m., pursuant to adjournment, Senator Francis G. Newlands presiding; also Vice-Chairman William C. Adamson.

Present: Senators Robinson, Underwood, Cummins and Brandegee, and Representatives Sims, Cullop, Esch and Hamilton.

Examination of Mr. Alfred P. Thom, Counsel, Railroad Executives' Committee.

The CHAIRMAN: The committee will now enter upon the examination of Mr. Thom on the matters concerning which he has addressed us, and the members of the committee, commencing with the vice-chairman, will examine Mr. Thom in turn, according to their order, alternating between the Senate and the House, and later on, with the consent of the committee, I shall take occasion to reverse this order so as to give all the members of the committee a fair chance before exhaustion of witnesses by taking up interrogation. It is my purpose, as chairman, to question Mr. Thom regarding the national incorporation of railroads, and with reference to certain bills which I introduced upon that subject from 1905 down to the present time, the bills being substantially the same but varying in certain features according to the progress of the discussion.

With the consent of the committee I will put in the record extracts from these bills, the views expressed by me in certain reports of the Interstate Commerce Commission, notably on the Hepburn Bill and the Commerce Court Bill, in which I took up the discussion of the question of the national incorporation of railroads, and also certain extracts from the hearings upon this subject, and I will invite the attention of Mr. Thom to this matter and will interrogate him regarding it later on after he has read the matter which is inserted in the record.

I also wish to insert in the record a magazine article of the *North American Review* of April, 1905, entitled "Common Sense of the Railroad Question," which dwells upon the subject of the national incorporation, and I invite Mr. Thom's attention to that.

Mr. ADAMSON: Mr. Chairman, is that article by the chairman?

The CHAIRMAN: Yes.

The CHAIRMAN: Mr. Thom, we all understand that the numerous railways of the country, aggregating at one time many thousands, have been organized in great systems, each one of these systems embracing numerous States. Will you please state under what method of organization these consolidations of State railways have been organized, and the advantages or defects which those methods of organization have?

Mr. THOM: The methods have very greatly differed. At times there have been conditions of universal bankruptcy in certain sections which resulted in sales under foreclosure of a great many roads. In cases of that kind it not infrequently happens that the physical properties have been bought by the same interest and are in the hands of one company. It also happens that in obtaining ownership of the properties there has been a purchase of the capital stock by what became then the parent company with control and operation of the stock ownership. It also happens that a great many of the physical properties have been leased to one company and the operation has been continued under long-term leases—the operation of the physical property. So that the three methods have been the actual acquisition and ownership of physical properties, the acquisition of stock, and thereby control of the acquired property, and a lease of the physical property and the operation under the lease.

The CHAIRMAN: The main corporation in these systems is organized under the laws of a single State, is it not?

Mr. THOM: Yes; it may be at times that they also have

corporations or franchises from other States and sometimes there is statutory power conferred upon a company of one State by another State, by express terms, as, for example, the Baltimore & Ohio Railroad operates in the State of Virginia and Virginia conferred upon the Maryland corporation certain powers. There are also, at times, corporations of various States, the line being built under the corporate charter granted by several adjoining States, and then the lines united. Illustrations of that may be given. There has been a great variety of methods in the creation of these continuous lines.

The CHAIRMAN: Now, where a corporation organized under the law of one State, for the purpose of constructing or operating a road in that State, seeks to acquire the property of railroads engaged in operating in other States, has it been customary to obtain the consent of the States?

Mr. THOM: Very frequently there has been sufficient power under the charter of the acquired road to dispose of its property, or the stock, to the corporation of another State. Wherever that is not done, of course, you have to have special authority from the State.

The CHAIRMAN: From the State in which the property lies?

Mr. THOM: From the State in which the property lies.

The CHAIRMAN: As a rule, are there general statutes covering those subjects, so as to make acquisition easy, or do the corporations have to get special legislation upon the subject?

Mr. THOM: It has been mostly done under the original charters, my impression is. Of course I am speaking now from general impression. I have not gone into this thing in any great deal of detail, but my general impression is that there has been a tendency on the part of the States, in giving the charters, to grant powers adequate to this transfer from one to another. There have been a great many make-shifts necessary. I suppose the ideal way of creating a property is that there shall be one title to the whole property; the

company shall own all the physical property that it operates. That is the ideal way. Instead of that, there are a very great many makeshifts that have to be adopted, and that is so of perhaps nearly all the railroads of the country. The Pennsylvania Railroad at this time, I think, has over 100 different corporations within its system—how many I do not know. The figure that is in my mind is 149, but I cannot be accurate about that. I have never looked into it, but it is a great many, and they are feeling the difficulty of this tremendous number of corporate entities in a single system.

The CHAIRMAN: Where a railroad system, organized in one State, has sought to acquire property in other States with a view to meeting the national requirements for interstate commerce, has there been thus far very much complexity in the arrangements?

Mr. THOM: There has been very considerable complexity. In some places it is absolutely impossible—you take, for example, in the State of Texas—the State of Texas does not permit a foreign corporation to own a railroad in that State. The only way, therefore, you can have a through line—continuous line—made up of any part of a railroad in Texas, is that a Texas corporation shall own that property, and the outside corporation has to own the stock. A very serious situation arises about that in Texas, for this reason: The laws of that State, as I understand it, have required valuation of properties in Texas—railroad properties—and they will not issue any—will not permit the issue of any securities in excess of that valuation. The valuation is away down below the capitalization at the time the valuation was made. As a result there have not been any Texas roads that have been able to get any money at all on their property, and the only way they could be kept up to anything like the requirements of the public, was that the parent company outside of Texas should lend its credit to raise the required funds, and in that way to furnish the tracks and the yards and the equipment necessary for the Texas roads.

The CHAIRMAN: That parent company is popularly known as the holding company, is it not?

Mr. THOM: No, it is not the holding company. That is not what my understanding is of a holding company. I do not understand that a company that is itself an operating company, engaged in that business, and simply increases its system by operating and holding the stock of another company, is what is ordinarily known as a holding company. A holding company, as I understand it, is a company that does not operate at all, but holds the stock of a good many roads, merely as a corporate entity, created for the purpose of holding them. Now, it is all a matter of definition. Of course, you can call it either way you please. The operating company does hold the stock, but it is not what I have understood to be popularly known as a holding company.

The CHAIRMAN: There are companies that are exclusively holding companies, that do not operate the roads?

Mr. THOM: Yes.

The CHAIRMAN: There are other companies that own roads, and also are holding companies, in the sense that instead of owning the physical properties they own the stock of operating companies?

Mr. THOM: That is true.

The CHAIRMAN: You referred to three classes of roads, one holding roads under ownership, another holding roads or controlling them through the ownership of their stock, without operation, and others controlling roads by lease. I imagine you would add to that a fourth class, the ones to which you have referred, that hold the physical property and also hold the control, operating companies through the ownership of stock?

Mr. THOM: I understand the latter one that you mention to be covered by my first division into three, and this other one that has been added about holding companies has come up since, but you can divide them into those four classes—four methods.

The CHAIRMAN: Now, about how many large systems are there in the United States, and what proportion of the mileage of the country do they own?

Mr. THOM: Now, I cannot answer that, Senator. I do not know how many there are, and I have not made any estimate of the amount of mileage that they hold. I think I have seen it stated in some of your writings that there are about ten.

The CHAIRMAN: Yes.

Mr. THOM: But I have not gone over that myself, and do not know.

The CHAIRMAN: Would the system which you propose of national incorporation of railways, have the advantage of simplicity in organization?

Mr. THOM: Undoubtedly.

The CHAIRMAN: And operation, as compared with the present system?

Mr. THOM: Both. It would also have advantages in methods of financing—simplicity of financing.

The CHAIRMAN: Take the system with which you are familiar, the Southern Railway System, which I presume is a fair illustration of the method of organization of the great systems of railways in the country. Will you kindly state what is the State of the parent organization?

Mr. THOM: The State of the parent organization is Virginia, and it has large and liberal powers, both in respect to acquiring properties of other roads and being acquired by other companies. It also has large powers in respect to the question of stock in other roads, and there could probably be no better illustration of the different methods of ownership than are presented by that problem. For example, you take what is known as the general mortgage. You will find there a great many pages—perhaps fifty—describing the various properties that are mortgaged; describing every conceivable method of ownership; the stock of such and such a road is mortgaged; the trackage right on another road is mortgaged;

the leasehold right on another road is mortgaged; the physical property actually owned is mortgaged, and so it goes on for pages, describing the methods of ownership, or the interest the Southern Railway has in these various properties.

The CHAIRMAN: In how many States does that system operate?

Mr. THOM: Eleven.

The CHAIRMAN: All of them Southern States?

Mr. THOM: No; in addition to the tier of States between the Potomac and the Mississippi rivers, and south of the Ohio, they operate also in the States of Indiana and Illinois.

The CHAIRMAN: How many different railways have been gradually incorporated in the Southern Railway System?

Mr. THOM: I could not tell you that, but a great many.

The CHAIRMAN: A hundred?

Mr. THOM: I would have to verify that. I have never enumerated them.

The CHAIRMAN: How do the various States within whose boundaries the Southern system operates, outside of Virginia, regard the control of the operations of the roads within their boundaries, by a foreign corporation, organized under the laws of Virginia?

Mr. THOM: I must say that I have never seen any very marked degree of jealousy about that.

The CHAIRMAN: You have not seen any marked opposition to the inclusion of these various State railways, in the system organized under the laws of Virginia?

Mr. THOM: No; it is true that I came into the life of that road after that had all been accomplished.

The CHAIRMAN: When did you become associated with the Southern Railway Company?

Mr. THOM: I came in—I was leased into the Southern with the Atlantic & Danville road.

The CHAIRMAN: And when was that?

Mr. THOM: They acquired me by lease in 1899.

The CHAIRMAN: There were a large number of roads absorbed in that system, were there not?

Mr. THOM: A very large number; yes, sir.

The CHAIRMAN: Has that union of roads under a Virginia corporation resulted to the advantage of the efficiency of transportation?

Mr. THOM: Oh, immensely. That has been done as a distinct answer of the transportation people to the economic necessities of the communities they serve. The Southern Railroad is in a small market, that is, practically small markets. Of course there are large and valuable markets in that section, but the great demand of the people there is for access to the larger markets, both of this country and of the world, and in order to accommodate that movement of commerce, these roads were thrown together. I do not mean by that to say that there were not reasons of financial nature which appealed to the people having that in charge, too, but that union would have been impossible if only the financial views of the managers had been involved. The financial views of the managers were sustained by the universal recognition that the movement of commerce required these long, continuous lines.

The CHAIRMAN: You speak of the universal recognition. Do you understand by that that the public opinion of the region in which your roads are operated sustained this union of railways?

Mr. THOM: Undoubtedly.

The CHAIRMAN: Have you observed any signs of dissatisfaction with it and a disposition to return to the old system of separated railways?

Mr. THOM: None whatever. It is in answer to the absolute necessity of commerce.

The CHAIRMAN: Then your contention is that this method has been the result of economic necessities?

Mr. THOM: Yes, and commercial evolution.

The CHAIRMAN: Now would it have been much easier and simpler to have accomplished that union of railroads

necessary to the economic development of the South under a national incorporation act than under the present system?

Mr. THOM: Undoubtedly.

The CHAIRMAN: Would it have been attended with less expense, in your judgment?

Mr. THOM: Yes, undoubtedly.

The CHAIRMAN: And less friction?

Mr. THOM: Undoubtedly; and would have made a more absolutely workable instrument. You would have had a unit then. The systems are now held together in an artificial way. They are contrivances to meet legal difficulties. They are not made one complete and homogeneous unit.

The CHAIRMAN: Are we to understand that the railway executives and managers throughout the country are now agreed upon the importance of national incorporation of railways?

Mr. THOM: Of course in a large body of men, in railroad life as well as in any other, you will find men of different views. You find also, of course, every now and then a company peculiarly situated, having advantages under the present conditions which they do not feel that they could surrender for an untried condition. But I think I can say—I refer to that class of people merely to emphasize the unity of view which the railway managers of the country have come to in respect to this matter. We have debated this question a good deal among ourselves, and in the committee of counsel, of which I am chairman, which has associated with it the committee of executives, known as the Railway Executives' Advisory Committee. When we first commenced to debate it there were two who were very much opposed to it. I imagined, of course, that they were representing the policies of their management, and we had an opportunity subsequent to that time to debate the question before the presidents. I found that I had been correct in supposing these gentlemen were representing the policies of their companies, and they were two of the very important

companies of the country. After debating it the executives came into the plan of a compulsory incorporation bill, not an elective one, because they believed it would be best for the country, while they might have to give up some of the special features of their charters, their privileges, which they valued, they believed they would get more in the way of helpfulness by coming to a system of this sort than otherwise, and so those who do not agree are in number very small. I do not know but one. There may be two or three.

The CHAIRMAN: I will state, Mr. Thom, that in 1904 and 1905 an investigation was made by the Interstate Commerce Committee of the Senate, of which I was a member, regarding the requirements of interstate commerce, and particularly the advisability of giving the Interstate Commerce Commission the power to fix rates, and during that investigation I presented a scheme for national incorporation, and questioned a great many of the railroad executives and managers regarding it, and I found that apparently none of them viewed it hospitably, so I was compelled to present my views in a separate document in connection with the report of the committee upon this subject. I also took up the question again in the Commerce Court investigation, and there found that the views were not hospitably entertained by the railways, and by few of the members of the court itself, as was the case with the previous committee considering the Hepburn bill. I believe the only witness during all that time who encouraged me at all in the views which I entertained was Senator Cummins, who was then governor of the State of Iowa, and who appeared before the committee. That was on the Hepburn bill. Now has this change of view upon the part of the railway executives been a recent change and what has occasioned it?

Mr. THOM: It has been a gradual change to a realization of what is now believed to be a necessity. The difficulties of railroad management have been becoming more and more apparent; the view that no industry could flourish where

both its income and its expenses were beyond the control of the owner, and especially that that could not be done if the income was subject not only to one comprehensive governmental control, but could be cut down by innumerable governmental bodies with different policies, different outlooks, who were, in the nature of things, unable to take more than a partial view of the property, this has led those responsible for the success, primarily responsible for the success of these instrumentalities of commerce, to look to a method of strengthening them in the public confidence, and they have come to believe that that is impracticable unless the United States Government will take charge of the instrument of interstate commerce and will regulate it in accordance with what probably actually is. It is a national problem, and the standard of the sufficiency ought to be fixed by one authority which can take a comprehensive enough view to determine how good it ought to be and what is necessary to its successful service. Now that led to the conclusion that when you once concede that there must be governmental regulation it led to the conclusion that there should be a system of single governmental regulation. The differing views of the States in regard to what a railroad ought to be allowed to do in the way of improvement, what it ought to be allowed to do in the way of equality of terms as between the different States, and similar problems, have borne in upon the railroad management until they are convinced that they can no longer cope with their problems unless they have a single regulating power. From that it was easy enough to see that they had been mistaken heretofore in their view that there should not be a system of national incorporation, because national incorporation is an essential facility in the way of having complete national regulation.

Now, of course, we are all obliged to admit that on the part of the owners of railroads, and on the part of the managers of railroads, there has been an unwillingness to accept

any governmental regulation to a greater extent than was necessary. That has been a slow process. It started in the beginning by a denial of the propriety and justice of any regulation; but, step by step, the soundness of the public view that there should be governmental regulation has been more and more accepted. Railroad managers have changed; a generation has come and gone since this thing was started twenty-nine years ago. Men have come into railroad management who were separated from the first and early conceptions of these matters, and they appreciate that there must be—and I think I may say for them, generally, that there ought to be a system of governmental regulation; but they believe that it ought to be a philosophical system; that it ought not to present complexities which will repel investors; that it ought to be helpful; that it ought to provide the necessary protection to the instrumentality of commerce, which will make it always efficient for the service which is required of it, and they cannot see now, after debating the logic of those concessions, and after the adoption of those views—they cannot see where the stopping point is, or, if all those views are sound, where they can stop; and insist on the wisdom and advantage of national regulation alone, and still leave the actual corporate control of these instrumentalities in the hands of an authority other than the Nation. It seems that the power to control the national entity itself must necessarily follow the power of regulation by the Nation itself. The logic of that view has been now accepted by the railroad managers of the country, with the rare exceptions to which I have alluded.

The CHAIRMAN: Mr. Thom, there are two forms of meeting this requirement for national organization to which you refer: One is the creation, under national law, of national corporations that will own the physical property of the railroads in the various States, and the other is the creation of holding companies, under national law, which will own the stocks of corporations organized under the laws of and

operating in the various States. The latter, you will observe, has what might be regarded as an advantage: that the entity of the State corporations is maintained, whilst the union of these corporations is effected under the national law through a holding company. Will you please state your views as to the comparative advantages of these two systems?

Mr. THOM: We think that there should be a nationally created corporation which shall own the physical property. We do not see any disadvantage in that whatever. Of course, the parties in interest in respect to it are three: One is the State in its corporate capacity, the second is the security holders of the State corporations, and the third is the general public. The State in reality, in its corporate capacity, has no interest; its interest as a State is fully protected by having the Nation, which represents that State, as well as all the others, create a system which shall be fair as between the two. The logic and soundness of the view that no State can, with propriety, adhere to the view that it must hold on to some advantage for itself, over its sister State, in these matters of commerce which affect both, is making tremendous progress in this country. For example, every railroad that runs into the South—every large system that runs into the South, and goes from this section of the country, is an incorporation of the State of Virginia: The Atlantic Coast Line, the Seaboard Air Line, the Southern, the Norfolk & Western, and the Chesapeake & Ohio are all Virginia corporations. The only three roads in the South that I know of, of any importance, which are not Virginia corporations are the Louisville & Nashville, the Central of Georgia, and the Illinois Central. There are five of the great railroad systems of the South that are incorporated by the State of Virginia. Now, everybody sees that no individual views of the State of Virginia ought to be imposed on North Carolina or Tennessee or on any of the other Southern States. The State policy which might put a limitation on one of those five systems in Virginia,

of course, would naturally be resented by the other States, if they did not agree with that policy; and the question ought not to be left—the public is beginning to see that the power ought not to be left—in the State of Virginia to put a limitation on the charter of those five companies which will be felt throughout the system, but that there ought to be a power that represents every one of those States—Georgia and Alabama and Tennessee, as well as Virginia—that would pass on those questions of charter limitation; so that the view of the power of the State to put limitations or to give privileges is being rejected by the public thought of this country, for the reason that there you come across what Chief Justice Marshall so many years ago said, that while Virginia might be willing to do that the other States are not willing for it to do it. They want those questions of vital commercial interest to themselves passed on by a body that is not simply one of the States, but that represents all of the States; so that we can eliminate the interest of the State, as a State, in that matter.

Now, as to the interest of the stockholders and the creditors, it is our belief that there is a simple constitutional proposition underlying their rights. When they made their contract rights with a corporation chartered to do interstate and foreign business, they acquired their contract rights subject to the full exercise in the future by the Federal Government of the power to regulate commerce. In the nature of things, there could not be a contract right acquired by one of the investors in these railroads chartered to do an interstate business, which would limit the power of the Federal Government to fully regulate that instrumentality. The State itself had created it to do this interstate business; the people that had gone in as stockholders or creditors had gone into a concern organized, in the first instance, to do an interstate business. They found in the Constitution of the United States a provision giving to the Federal Government the full power to regulate interstate business—in-

terstate commerce. They then took their rights subject to the future exercise by Congress of that power to regulate commerce to the fullest extent that Congress might feel that the public interest might demand. You gentlemen will remember that that question has been passed on already by the Supreme Court of the United States. Years ago there was a man who was injured in a railroad wreck on the Louisville & Nashville road, giving him a legitimate claim against that company for damages. He settled that claim by assuming a contract relationship with the Louisville & Nashville. He got a pass for life from the Louisville & Nashville, in consideration of this claim that he had against the road. That was legitimate; that was lawful at the time it was done. There was nothing in the laws of Congress to prevent it when that contract was made; but, as years came along, Congress undertook to regulate how people could pass on a railroad—the terms on which they must deal with the railroad; that there must be absolute equality, and that nothing should be taken except money for passage on a railroad, and that case was carried up to the Supreme Court, and the Supreme Court there said that this man took his contract right with the road, subject to the future exercise by Congress, to the fullest extent, of the right to regulate commerce, and that his rights under that contract must fall, because Congress had seen fit to regulate commerce to an extent greater than it had undertaken to do at the time that contract right was created.

Now we believe that these stockholders' rights and these bondholders' rights do not stand on any higher basis. We believe that when the bondholder lent his money to a railroad engaged in interstate commerce, and when the stockholder made his contribution to the capital of railroads engaged in interstate commerce, that *ex necessitati* they both did that subject to any legitimate regulation of commerce in the future which Congress might undertake. Therefore, we ask ourselves the question whether a system of national

incorporation is the legitimate exercise by Congress of the power to regulate commerce. We think it is. We think that everywhere it appears in the authorities that it is. If we are right in thinking that Congress, under the power to regulate commerce, may adopt a national incorporation law, then these stockholders and bondholders took their rights in the corporation subject to that possible exercise in the future, and they have no complaint; they have no case for compensation in the event that Congress does exercise that power of regulating commerce to the extent of adopting a national system of incorporation.

So that our view is that Congress can pass a law forbidding any railroad company, after a date to be fixed by Congress, to engage in interstate and foreign commerce unless it has taken out a license under the National Government, or unless it has taken out a charter under the National Government, and when that is done the stockholders of that corporation may meet and by a majority, not by a unanimous, but by a majority vote, bind everybody in it, bind the minority to a system of national incorporation, because that is one of the purposes which they went into business for, to do an interstate commerce business.

That is the other method of doing it, and we think, therefore, that there will be no difficulty about the matter, and that there will be no right on the part of anybody to object. But we do think this, we think that every right that has attached in that property, whether it be the right of creditor or right of a stockholder, must be preserved against the assets that pass into the national incorporation; that they must stand when they get there just as they stood in the corporation of the State. It is not a legitimate method of regulation to affect their rights *inter sese*, or their rights as to the corpus of the property, but as to the management of the property, as to the form in which it stands, that is a matter which is fully within the regulating power of Congress, and that when Congress preserves their contract rights in regard to

the assets of the company, they have guarded, that is Congress has guarded, every constitutional right of the creditor or the security holder, and still retains unimpaired its power to regulate and direct the instrument of interstate commerce in its business in commercial operation.

Now, the other class of people, to whom I referred as having an interest, is the public, and the problem is merely before you gentlemen to determine whether the public interest requires this action. You may say it does, or you may say that it does not. That is for you to say. But if you say it does, we are absolutely convinced that there is no constitutional obstacle in your way, that neither the State nor any of the security holders occupy any position that can in any way impede you in the full exercise of your power of regulating commerce.

The CHAIRMAN: Do you think that the consent of the State is required as to the acquisition and absorption of the property and powers and functions of a State corporation by a national incorporation organized under the national law?

Mr. THOM: No, sir. You do not transfer to the national incorporation any franchise granted by the State. You might confer upon the State corporation—I mean upon the national corporation—every franchise that the State has conferred upon it, but it will be your gift then and not the State's. The source of its franchise then is Congress, not the State. You would only acquire the physical property. You acquire none of the rights granted by the States, you would only acquire the physical property.

It is inconceivable that Congress can be charged with the duty of regulating and assuring that there shall be such a thing as interstate commerce unless it can enter upon the territory of the State and acquire the means of doing it, and it has been held that Congress can do that through the exercise of the right of eminent domain. The Supreme Court has decided that, even if the property did not belong to the railroads; even if it belonged to a citizen of the State, Con-

gress can go into one of the courts of that State and can have the property of an individual citizen condemned in order to create a system of interstate commerce.

Now, when the whole property has gone into an individual company, and ceases to be the property of a State corporation, and that company has acquired it for the purpose of devoting it to interstate commerce, and subject to regulation of Congress, then, of course, there can be no doubt of the power to transfer it to a better system of regulation and to a more extensive system of regulation than that which existed at the time that property was acquired.

The CHAIRMAN: I take it, then, that you think a system of holding companies, organized under national law, would not meet the requirements of the situation?

Mr. THOM: I do not think it would at all. I feel that that would lead to some diversified situation of conflicting, or accumulated necessity for corporate action which will retain all the complexities of the present situation, and that the whole thing can be simplified and unified by making one national corporation of the railroad system and letting that corporation own the physical property and be charged with the direct obligation to the country for its proper operation.

The CHAIRMAN: Assuming that the national system of incorporation of railroads is adopted, what, in your judgment, would be the application of the police law of the various States to railroads owned by such national corporations?

For instance, with reference to the gradings and crossings of railroads, with reference to the use of separate cars in the Southern States by the blacks—would the local police laws apply to such national instrumentalities?

Mr. THOM: My view—or perhaps our view, I may say—is that the police powers of the State ought to be affected to the least possible extent consistent with an efficient regulation of commerce. The people of this country value local government. It is a natural and it is a proper view. Men have always wanted their government near enough to their

homes to let the government understand the spirit of their civilization. Those police powers ought not to be affected in any way except under the compulsion of finding that any one police power is inconsistent with the national object which Congress has in view.

Now, take this matter of taxation. Of course, if there were government ownership there should be nothing but national government ownership. There has been no suggestion anywhere that the States should own these roads; if the government ownership should come there is a general concurrence in the view that the only governmental agency at all is the United States. Of course, that is a recognition of the fundamental of interstate commerce; that it has national aspects and necessities which cannot be dealt with locally. No State's rights man, no matter how deeply imbued he may be with that governmental philosophy, would for an instant think that any State should own these agencies of national commerce. All must concede that the United States Government must own them, if any government owns them, and that that conclusion comes out of the very nature of the business itself. It is national in its aspects. I say that all the contention for government ownership, therefore, recognizes the fundamentals of the plea that we are making for national regulation.

Now, if there was that system of national ownership of course that would take away from the States the right of taxation. It seems to us that in any system of national incorporation there should be a provision leaving to the States the right to tax all railroad property within their respective borders to the full extent that it would tax any other property there. I suppose the right of taxation is in the nature of a police power. Then we go to the other police powers. We think that Congress ought to start a system of regulation by putting on the State side of the line of the division between the national authority and State authority all those matters where there is a possibility, or I should say a prob-

ability of the power being exercised in a way not to interfere with the national purpose of regulating commerce.

The philosophy of this all would be, of course, to take this matter of grade crossings, and matters of that kind, as possibly affecting in a large way the instrumentality of commerce, and have them controlled by the National Government. But we do not think that it ought to be taken for granted that this is yet necessary. We think that ought to be left to the State until such time as it is demonstrated that the State policy interferes with the general policies Congress has in view. We think that ought to be left to the State.

We think, also, in the matter to which you specially alluded, the matter of separate cars to separate the races, where, in any one section of the country, there are susceptibilities on that subject which do not exist in others, we think those matters ought to be respected; and where there is any valid law of the State controlling that matter, we think that law ought to be left undisturbed by an act of Congress. There ought to be, in our judgment, the powers taken over by Congress which Congress can now see are essential to the successful operation of interstate commerce, and of a complete guarantee to the public of the efficiency of their commercial facilities. But nothing else, no other matter—I will not say right—but no other matter ought to be disturbed until it shall come to appear that the power, which is left where it is now, is being exercised in a way to affect adversely the public interests.

The matter of State rates, I have attempted to show you, is a matter which now is undoubtedly burdening the various States. The action of one State is undoubtedly burdening the commerce of another State, and is undoubtedly burdening interstate commerce. We think that undoubtedly ought to be taken hold of, because you cannot divide these instrumentalities and let some essential function of them be regulated by one system of government, and other essential

functions of them be regulated by other systems of government, and, at the same time, preserve the equality that ought to exist between them, and ought to exist between the commercial affairs of the country.

We think, also, there ought to be taken such matters as the equipment of trains which run unbroken across the continent, or half across the continent. We think there ought to be no necessity for stopping at State lines and changing the equipment, but, broadly speaking, our contention is that wherever there is a matter, whether even admittedly within the power of Congress, which can be, and probably will be, exercised by the States, without a disadvantage to the instrument of interstate commerce, and its efficiency in the public service, it ought to be left to the States.

The CHAIRMAN: Upon the subject of taxation, you referred to the fact that if the roads were owned by the Government there would be no taxation, of course, and that if they are to be nationally incorporated, we will all agree they must, of course, contribute to the expenses of the State, and municipal government, and to the National Government. Do you find that there is much variance in the laws of the various States with reference to the taxation of railroads?

Mr. THOM: Yes; we find a great difference, and a great difference in the tax burden of the States.

The CHAIRMAN: Do you find that variance as to law and variance as to the amount of burden imposes any difficulty as to the negotiation of securities at low rates of interest?

Mr. THOM: I am not able to say that I do. I think there are great inequalities between the various States with respect to the imposition of the tax burdens; that thereby the State that imposes the greatest burden is taking an undue part of the revenues of the company for its own purposes, and is putting—theoretically at least, and it would all depend on the amount of the tax—a burden on the other

States. That money has got to be made up somewhere. That is one of the things that must be taken into consideration when rates are fixed, and the State that imposes the largest tax, in proportion to some other State, to that extent increases that burden and adds to the aggregate expense.

Notwithstanding that, in striking a balance between the public interest on the one hand, and having a consistent and efficient system of transportation, necessary at all times for its purposes, and the interest of the public not to see sources of State revenue impaired unnecessarily, I believe that for the present at least—and I think it will prove to be so for all the future—that this power of taxation should be left with the States, to be imposed on this class of property in the same way it imposes, and to the same extent it imposes, taxation on other property belonging to the people in that State.

Great debts have grown up in municipalities and in States, based upon all the assets in the State, and, among them, railroad assets. I do not believe that it would be accepted as a fair consideration for those conditions if Congress were just to take away from the States this power of taxation on any very considerable part of the assets. No matter if it had the power, I do not believe that it would be accepted as a fair consideration for those local conditions for Congress to do that.

The CHAIRMAN: You are aware, as to national bank corporations, the national law fixed a rule for their taxation, are you not?

Mr. THOM: Yes, sir.

The CHAIRMAN: In the incorporation bill which I framed, I inserted a provision regarding taxation, providing that the stocks and bonds of corporations should be exempt from taxation, as being merely interests in the property of the corporation, but that the physical property of the corporation itself, within the boundaries of a State, should be assessed and taxed under the laws of that State. What do you think of such a rule of taxation?

MR. THOM: My own belief in the system of taxation is that you ought to tax the property. Now, the stock in a corporation is nothing more than the certificate of the ownership of the holder in the corporation. Here is a corporation with 100 shares of stock. A person owns one share of that stock. That means that he owns a one-hundredth interest in that corporation. Now, I do not see how that differs from the man who holds a deed to his farm. The title of the owner of the farm is his deed. To tax both the farm and the deed would be double taxation. To tax both the property of the railroad and the stock is double taxation, for the reason that I have just narrated. The certificate of stock stands in the place of the deed of the owner of the farm, as a muniment of his title. When we get to taxation of bonds, we get into a very difficult situation, not difficult in itself, having no inherent qualities of difficulty, but difficult because there has grown up in this country such an immense accumulation of public debt that you have got to look everywhere for sources of taxation, and to withdraw, all of a sudden, the entire bonded indebtedness of the country, as a source of taxation, would greatly disturb an intensely practical situation. I think that ought to be done, myself, on any legitimate basis, but I do not think that is a practical thing to do. I do not think it is possible to do it.

THE CHAIRMAN: Does not the bond also represent an interest in the property, just as the stock does?

MR. THOM: In reality it is a debt that the property owes. It is not a part of the title of the property, (secured by a mortgage, it is true), but it is a lien, and is not an interest in it. It is secured by the property, but not an interest in it.

THE CHAIRMAN: If you tax the full value of the property, or assess, rather, the full value of the property, and then assess the full value of the bonds and the stocks, is not that double taxation?

MR. THOM: Yes, sir; but that, of course, assumes, as it

is generally true, that the proceeds of the bond had gone into the property and the stock.

The CHAIRMAN: You dwelt upon the importance, in the public interest, of so regulating our railway systems as to enable them always to obtain sufficient capital for development and extensions at reasonable rates of interest. Now, from that point of view, does not the taxing system of a particular State affect the negotiability of bonds and stocks?

Mr. THOM: Undoubtedly.

The CHAIRMAN: —at reasonable rates of interest?

Mr. THOM: Undoubtedly. Before I came to Washington, in the community where I lived in Virginia, the rate of taxation on what is known as intangible property was so high that there was not anybody in the city that could afford to own a bond. You could get a bond then, when I came here, at a low rate—it was a period of low interest—and it was generally the case that bonds could be issued at four per cent, but the rate of taxation on that bond was over two. So, of course, there could not be anything like the ownership of a bond there, and you have got there a real difficulty.

The CHAIRMAN: The investing public was limited?

Mr. THOM: The whole credit of that community was excluded from the purchase of bonds. There is not any way of getting any credit in that community for the support of the bond issue of a railroad, but that same State did this in its recent constitution; there is a provision in the constitution of Virginia that where the property of a company is in that State and chartered by that State and is taxed, that the stock shall not be taxed, and that resulted in a great deal of the funds of the dependent people, children, *cestui que* trusts of various sorts, being put in the stocks of the Virginia railroads, and the event showed that a good many of them stopped paying dividends pretty soon and all that class were stranded so far as any income of that investment went.

The CHAIRMAN: What was the case with reference to bonds in Virginia?

Mr. THOM: There is no such provision in the constitution of Virginia in respect to bonds.

The CHAIRMAN: Then take a 4 per cent bond, subject to a tax, you say in Virginia of 2 per cent?

Mr. THOM: They have changed that now somewhat. That was the fact then?

The CHAIRMAN: Would such bonds, subject to such a tax, find a market in the State of Virginia?

Mr. THOM: No, not unless the purchasers were good dodgers.

The CHAIRMAN: How would you view them with a view to securing in the public interest money for the stocks and bonds of corporations at the lowest rate of interest, or dividends, an exemption of stock and bond issues of railways from taxation?

Mr. THOM: I believe it would be greatly to the public interest, but whether the public is ready for that or not I do not know, but I would think it was immensely in the public interest.

The CHAIRMAN: Would you question the power of the National Government to do that?

Mr. THOM: Not at all.

The CHAIRMAN: Assuming that in the gradual development of the railway systems of the country we will arrive ultimately at Government ownership, would you regard the national incorporation of railways under great systems as a step facilitating that result?

Mr. THOM: Recent events have very largely increased among railroad managers the advocacy of Government ownership. I suppose I am an altruist in a great many ways and my view as to the effect upon our national institutions is so pronounced that I would deplore the idea of Government ownership if we are to have free institutions in this country.

Mr. ADAMSON: I do not believe Mr. Thom exactly under-

stood the question of the Chairman. I understood the question to be whether Federal incorporation would lead to Government ownership.

Mr. THOM: I am coming to that.

Mr. ADAMSON: Whether it would facilitate it.

Mr. THOM: I heard the question. Federal incorporation would not in any sense be an impediment in carrying out any plan of national ownership. The method of acquiring these properties, however, by the Government is so easy in case it has got the money to pay for them, that I do not think it is necessary to facilitate it by a system of Federal incorporation. My views in regard to Federal incorporation are in no way influenced by the idea that it would facilitate public ownership, or that it is desirable to facilitate public ownership, and on that I am speaking my view, not the views of the railroads, because some of the railroads are getting very anxious for Government ownership.

The CHAIRMAN: Regarding the dividends of corporations, I understood you to say that the general concensus of railway men was that shares could be negotiated at par and held at par if provision were made for 6 per cent dividend and 3 per cent for a surplus, applicable to lean years, to extensions and development of the roads, and so forth. Would you deem it wise to put in the incorporation act a limitation of dividends, or a provision for dividends of not exceeding 6 per cent, with a provision for this surplus?

Mr. THOM: Before answering that question may I add something to my previous answer in order to avoid misunderstanding?

The CHAIRMAN: Certainly.

Mr. THOM: I do not want to be understood in anything I have said as indicating that the railroad view is in favor of Government ownership. It is not. I merely meant to say that there were some people who had come to that view, therefore I preferred merely to express my own views instead of undertaking to express a great many people's views. I think the view of the railroads is adverse to that.

Now as to the question which you present, Mr. Chairman, in regard to the limit on dividends. I do not think you can limit the maximum of dividends unless you limit the minimum of dividends. If the Government is prepared to guarantee dividends on stocks of a certain amount then I think you can limit the maximum, but if you are going to leave open the possibility of losses of all dividends, I think you are going to withdraw a very great attraction from this class of investment if you limit the dividends that may be legitimately earned. I cannot conceive of an inducement to anybody to put in money in an enterprise which leaves him free to lose everything and says that he cannot gain any more than a certain percentage in that, when that percentage is the thing that he can get much more readily from some other source of investment, and where he may get a great deal more. I would rather loan money on a farm mortgage at 6 per cent than to put money in a railroad where I might lose everything and could never get more than 6 per cent.

I referred a day or two ago to one class of investors, which modern conditions have repelled from railroad investment, and that is the class that is willing to risk its investment for the sake of a chance of handsome returns. You must realize that that is the class of people that built the railroads of this country. Whatever may be the criticism on what is called watered stock and high finance, and all that sort of thing, the methods of the man that was willing to adventure his means has given to the American people 250,000 miles of railroad.

The way the railroads of this country were built was this: A certain number of bonds were issued to the people who built a railroad, and with them was given a bonus of stock. Now it was supposed that those bonds, which represented the input of money, would represent the ordinary commercial return. The bonus of stock represented the hope of the projectors; it represented what they might anticipate

that if their enterprise was successful would come to them in unusual returns. That is what is known as watered stock. That was the bait, that was the attraction which aroused the individuals in this country and abroad to build American railways, and notwithstanding all of the criticism that we hear made of that we must realize that out of it has come our commercial opportunities. You can never take away your railroads. They are here, they are the servants of the people, and you got them in that way and got them under laws permitting that.

Now if you are not only going into that question of feeling bitterly denunciatory of that system, but are also going to say that no man who puts his money in a railroad hereafter can expect to earn more than 6 per cent, and he may lose it all, you are going to separate from the production of the facilities of commerce all the class of men who want to make an investment in the spirit of adventure and take the chance of getting their handsome return. You will cut down very largely your investing public.

And if I am right in thinking that the chief interest of the American public is in facilities, I think a limitation of dividends would have a very disastrous effect upon the assurance of such facilities. Now, we all know that there are very few railroads that pay more than the figure you have mentioned, Mr. Chairman, six per cent, but there is no legal inhibition to its being more, and the adoption of a governmental policy of limiting the amount of dividend to what can be gotten, almost on any investment, without guaranteeing a return of at least a certain amount would, in my judgment, make the railroad investment field a very unattractive one.

The CHAIRMAN: Mr. Thom, in your opening statement you referred to the growing indisposition of the public to invest in railway securities, either bonds or shares. Was that manifested before the commencement of the European war?

Mr. THOM: I believe, Mr. Chairman—I am not able to

verify this statement I am about to make—I believe when you look at the course of investments of savings banks that you will find a decline in their investments in railroad bonds to begin with the realization that the people were made to have—I mean the investment public was made to have by the first decision against an advance in rates, that there was no longer any control on the part of the investors of the revenues of the company. I think that the realization, which has now become general on the part of the public, that there is no control in the investor of how much his revenues are going to be, or how much the expenses are going to be, has been the thing that has alienated the public from railroad investment. I would say that decision I refer to was before the European war. Certainly, we find it the case that there is a pronounced indisposition to invest in railroad securities, and when we study the situation, we find the conditions all the time approaching the exhaustion of the margin between the existing liens and the sum of the assets of the company; so that the American people are confronted with the consideration of that margin. You are not interested in whether anybody wants to buy a bond on the market, the bond of a railroad, or whether they want to buy a bond of a steel company, unless it means something else, but you are interested, and profoundly interested, in watching that margin between the amount of the liens on a property, evidenced by fixed charges, and the value of the assets, and that is seen gradually but surely decreasing, and what is left all the time measures the ability of the carriers to keep on producing facilities that are required by Congress. You must be profoundly interested in knowing that progress. That is what is going on today.

The CHAIRMAN: But do you not think that the throwing of foreign-held shares and bonds of American railway companies upon our markets, caused by the European war, has absorbed the surplus money of the country, available for investment, to the exclusion of the capacity to absorb new securities? In other words, have not the old securities of these

companies, held abroad, taken the place in the markets of the United States for investment that might have been taken by new securities if it had not been for that war?

Mr. THOM: Undoubtedly, that has had a very marked tendency and a very large influence in producing the conditions, because just in so far as prior liens and the most desirable classes of stock are offered the American public they, of course, are disinclined to take inferior liens, which would mean the new offerings, and they have preferred the best classes of securities, but that has not absorbed the funds in America that are available for investment. We do not see any confinement of present investments to railroad securities. On the contrary, there is abundant capital in this country—overflowing capital in this country to seek another avenue to invest. Take the steel companies; the copper companies; municipalities of various classes; securities that might be mentioned, and there are untold millions pouring into them today. Cotton, 25 cents a pound; copper, 35 cents a pound; steel, many dollars a ton advance, and that is where the American investment is going. You see it every day.

The CHAIRMAN: You are aware that this country has been compelled to absorb nearly three billion dollars' worth of American railroad securities, since the European war.

Mr. THOM: And to that extent the forces that you have alluded to have been operating, but I mean to say that there are tremendous classes of investment, outside of railroads, that are now being preferred by the American public. Take these copper stocks; they pay you about 12 per cent, and steel stock, way up—the returns way up above anything you can get from any railroads, and they can advance the prices of their products when they see fit. The railroads cannot advance their prices.

The CHAIRMAN: Mr. Thom, I want to question you regarding the traffic divisions of the United States. How many are there?

There is what is known as Official Classification territory which takes in Trunk Line Association territory and the Central Freight Association territory. By that I know you

gentlemen understand that freight—subject to freight commodities and the classes—is differently classified in different sections of the country; one in the Southern Classification territory, another in the Official Classification territory and the third is the Western Classification territory.

The CHAIRMAN: Would it be your idea to have a regional commission in each one of these traffic areas?

Mr. THOM: More than that. I think Congress should study the transportation systems of the country, and should make more than one for each of these sections, but that the division should be on lines of transportation, rather than geographically. For example, I should suppose—just for example I suppose that a region could probably be made out of the northern transcontinental lines running from the Mississippi River to the Pacific Coast, such as the Northern Pacific and the Great Northern, the Burlington and some of those roads, and that it would be appropriate to have another classification territory between that—I mean another region between the southern boundaries of that and the Gulf of Mexico, and perhaps more still. I think whatever is necessary in order to bring the administration of this system into local territory, ought to be afforded in the division of the country into regions.

The CHAIRMAN: Have the railroad executives or managers any definite suggestion to make regarding the boundaries of these traffic areas or regions involved?

Mr. THOM: They have not any definite suggestion to make at this time. Of course, their opinion on the subject would be open to use by your committee at any time you may desire it. They have not formulated any plan.

The CHAIRMAN: Mr. Adamson, do you desire to ask any questions?

Mr. ADAMSON: I would like to have the hour after one o'clock. You are doing so well that I think you could occupy the balance of that time.

The CHAIRMAN: I am through, so far as I am concerned.

I would like, when questions are handed around the committee again, to question Mr. Thom after he has examined the material that I submitted this morning.

Mr. ADAMSON: Is it your purpose to adjourn at one o'clock or half past one?

The CHAIRMAN: That is for the pleasure of the committee. Would you prefer to wait?

Mr. ADAMSON: If I can think of anything appropriate to ask Mr. Thom I would like perhaps to complete my interrogatories at one sitting. However, I will go on now, if it is desired.

The CHAIRMAN: Shall we pass you, for the present?

Mr. ADAMSON: If you choose.

The CHAIRMAN: You may proceed now, if you wish, or if you prefer, I will pass to the next member of the committee. The next would be Senator Robinson.

Senator ROBINSON: I do not care to ask any questions now.

Mr. ADAMSON: I will not let you waste time. I will go on if no other gentleman wants to proceed, or if you are not ready to adjourn.

The CHAIRMAN: You may consult your own pleasure, Mr. Adamson.

Mr. ADAMSON: I never have any pleasure. I am for the people. If I get no pleasure out of that I waive it. Mr. Thom, you have several times alluded to the constitution in your discourse, which is a kind of novelty of late days, for that to be alluded to.

Mr. THOM: Oh, yes.

Mr. ADAMSON: I presume the paragraph to which you allude is in the enumeration of the powers of Congress, in which I find, "To regulate commerce with foreign nations and among the several States and the Indian tribes."

Mr. THOM: Yes sir.

Mr. ADAMSON: Can you tell me what particular business and things and movements that refers to?

Mr. THOM: I did not hear you, judge.

Mr. ADAMSON: What particular persons and things and instrumentalities does that refer to?

Mr. THOM: I think it refers to all instrumentalities of interstate commerce.

Mr. ADAMSON: Does it not refer to anybody who trades across a line, or converses across a line or transfers people and property across a line, or does any business, or has any conversation across a State line?

Mr. THOM: In so far as relates to these cross-State line transactions, yes, sir.

Mr. ADAMSON: That is what we are talking about?

Mr. THOM: Yes, sir.

Mr. ADAMSON: There are two kinds of people who do business, natural and artificial.

Mr. THOM: Yes, sir.

Mr. ADAMSON: You understand that this section of the Constitution is limited in its operation by any particular incident to the birth of a man or the organization of a local corporation?

Mr. THOM: Not at all.

Mr. ADAMSON: Do you not understand that regardless of whom a man's father and mother were, or what State chartered the corporation, or what its terms and conditions are, that under this authority of the Constitution, when Congress acts it superadds or displaces anything in conflict with it and absolutely controls the persons, natural or artificial?

Mr. THOM: It displaces whatever is in conflict with it and absolutely controls the subject with which it deals.

Mr. ADAMSON: Then that section of the Constitution, if Congress should do its duty, seems plainly to control every person, natural or artificial, engaged in interstate commerce?

Mr. THOM: In so far as they are engaged in interstate commerce.

Mr. ADAMSON: Well, that is what we are talking about?

Mr. THOM: Yes, sir.

Mr. ADAMSON: Well, you have alluded to the police powers of the States. The police powers are those which it would be unconstitutional for Congress to interfere with, are they not?

Mr. THOM: No sir; the police powers can be police powers and Congress might interfere with them if it chose to exercise full power under that clause that you have just read.

Mr. ADAMSON: If Congress does not see proper to do so, it may leave to the States any operation which the States desire to take, but when Congress does act as to the matters affecting interstate commerce, the action of Congress supplants the other regulations entirely?

Mr. THOM: Well, there are some aspects of interstate commerce that the State cannot do anything about at all even if Congress is silent. There are others where until Congress speaks the State may occupy the field, but when Congress speaks as to that class, any provision of the State law with respect to it disappears.

Mr. ADAMSON: Are there any things done by a State within its own borders not affecting outsiders, or outside transactions, that it would be unconstitutional for Congress to prohibit or interfere with?

Mr. THOM: Is there anything which a State has power to do?

Mr. ADAMSON: Can do within its own borders, not affecting outsiders or outside territory, that Congress could not constitutionally prohibit or forbid?

Mr. THOM: If I understand your question, I think there are a great many subjects, or things that a State may do which Congress cannot at all interfere with.

Mr. ADAMSON: Well, if that be true, is a charter for a Federal corporation any higher or more binding than an act of Congress direct?

Mr. THOM: Not at all.

Mr. ADAMSON: If a thing be unconstitutional, if enacted by an act of Congress, would it not be alike unconstitutional if attempted through the indirect method of a federal corporation which is the creature of that act of Congress?

Mr. THOM: Undoubtedly.

Mr. ADAMSON: Well, I will pass to another proposition. I am satisfied with that.

Now, you have described eloquently and ably and justly the rights which the States acquire which they do not already have, in return for those which were surrendered in the formation of the Constitution. Those rights, as I understand you—and I agree with you as I understand it myself—are the rights of any person in a State to trade, travel, and traffic in any other State in the United States.

Mr. THOM: You mean that is one of them?

Mr. ADAMSON: I say that is one of them. You beautifully and eloquently describe that.

Mr. THOM: That is one of them.

Mr. ADAMSON: My point is, as I understood you it is a State right acquired at that time—they may have had some of them before—but it is a State right to trade, converse, or travel anywhere in the area of the United States?

Mr. THOM: Absolutely, freely.

Mr. ADAMSON: Well, that being true the right of the local communities, which are commonly called States, to charter corporations which may do business anywhere in the States, is a State matter and not a national right, is it not?

Mr. THOM: No sir, I do not think so.

Mr. ADAMSON: You do not think it is a State right?

Mr. THOM: It is a right to do that until Congress shall act on the subject, if that is what you mean.

Mr. ADAMSON: But you say that one of the rights which they acquired was the right to converse and travel anywhere in the United States?

Mr. THOM: Yes sir.

Mr. ADAMSON: Now you say that right which they acquire is limited by the pleasure of Congress in the future?

Mr. THOM: No, sir; I think you misunderstood me. I said that they have a right to travel and to trade under such regulations as Congress may prescribe under the clause I have mentioned.

Mr. ADAMSON: Then your beautiful argument about the State rights acquired under the Constitution, loses some of its value and force, does it not?

Mr. THOM: Not to my mind. My argument was that each State acquired the right, by entering the Union, to have its trade free from any embarrassment and from any regulation except as prescribed by the impartial authority of Congress, which represents all the States.

Mr. ADAMSON: I understand that, but it is free so far as the action of any other State is concerned?

Mr. THOM: It ought to be, but is not now.

Mr. ADAMSON: It has the right to trade and traffic in any State, but it is subject to regulation by Congress?

Mr. THOM: Undoubtedly.

Mr. ADAMSON: That is, reasonable regulation?

Mr. THOM: Undoubtedly.

Mr. ADAMSON: What is that right? Is that a State right or a national right?

Mr. THOM: I think it is the right of a State to invoke at any time it pleases——

Mr. ADAMSON: Then it is not a right——

Mr. THOM: Will you please let me finish my answer to your question—at any time it pleases the benefit of its constitutional protection. Now, suppose that the State of Georgia were invaded. I think it is the right of the State of Georgia to ask of the United States to send its armies there and repel that invasion. I think if the National Government should undertake to say that every other State in the Union should have a post-office system, but that it should not extend to Georgia, that Georgia would have the right to have that post-office system extended. I think if the State of Alabama were to attempt to do something prejudicial to Georgia's commerce—the right to trade in Alabama—that Georgia would have a right to invoke the clause of the Constitution which gives the entire power of regulating commerce to Congress, and not to the State of Alabama.

MR. ADAMSON: Well, whether any State ever enjoys the right to efficiently acquire it or not, it did acquire State rights.

MR. THOM: I think it acquired an immense State right. I do not think they would have gone into the Union unless they thought they would acquire State rights.

MR. ADAMSON: If that be true, and I think it is, then the conversation that you and Secretary Olney indulged in the other day, when you read his letter, is a little inaccurate to denominate these present lines of traffic national railroads, is it not?

MR. THOM: That was his nomenclature, which he explained was a short way of expressing an interstate and foreign railroad, but he did not want to repeat that every time. He said he would call them national.

MR. ADAMSON: Transition seems to be easy sometimes, the use of one term or the other, according to your doctrine and mine; it always leads the other way.

MR. THOM: Judge, I do not feel any hostility to the National Government. I believe a nation occupies a ground of usefulness to the State which could not be occupied in any other way. I believe there should be no jealousy toward those powers. I believe they are just as important to Virginia, my State, and Georgia, your State, in the field which the nation occupies as are the rights reserved by those States.

MR. ADAMSON: It has become fashionable, Mr. Thom, when the Constitution is talked about, for that term to be given to it. If a man talks about local authority and local rights, some men sneer and the States talk about State rights. If he gets to talking about the Constitution as being dual and wants the Government in all its grandness and greatness and national power to do what the Constitution says for it to do, and the States in their inherent right acquire rights to do the part the Constitution says for them to do, people come and talk about hostility, the one to the

other. All lawyers know that this Government is dual, that part of its functions are to be discharged by Congress—the general public—and the other is by the States; and there is no use of anybody—and we had just as well let that go out of fashion—to talk about one being hostile to the other. What we want to do, either here or elsewhere, is to do something that is constitutional.

Mr. THOM: Undoubtedly, and I do not think there ought to be any jealousy on the part of the National Congress toward what are commonly known as the rights of States. They are just as sacred, they are just as important and they are absolutely essential to the due balance of powers in our system of democratic government. But I do not think there is any danger of the National Government trying to invade any rights of States wherever there has been an extension of national power within the last thirty years. My belief is that the demand for it has come up from the States, from localities.

Mr. ADAMSON: Mr. Thom, the question is now mooted. For a long time it was regarded as certain that within the confines of a State the State authority could absolutely fix rates and practices between points within that State, having no relation, or not traveling or being shipped into any other State. I understand it is now contended that if the rights and practices are favorable, or less favorable than similar rates and practices in a neighboring State, that they may be held to be a violation of interstate commerce, and may be regulated.

Mr. THOM: I think the line of demarkation is this—

Mr. ADAMSON: I am not going to require you to state what your or my opinion is about it. What I was getting at is this, regardless of what the truth of it is, regardless of which is right, it is mooted, and I want to see if I can develop in your legal opinion, for which I have great admiration, the principal change by national incorporation, if two lines of road within your State parallel each other, as be-

tween Richmond and Danville, or between Norfolk and Danville, and one is charged by Federal authority and one by State authority as to the things which they should do between those points, both in the same State, as to the rates and practices and the treatment of the public—I want to know if they both would not be required to act just alike, regardless of where the charter came from.

Mr. THOM: Undoubtedly. Now, I want, if you will permit me, to say that the line of demarcation between what the nation—or the United States, if the word nation is not liked—what the United States ought to do in the matter of regulating commerce, and what it ought not to do, is determined by whether or not what the State undertakes to do has an extra-territorial effect. If what the State attempts to do is to influence a situation in another State, or influence interstate commerce, then the State ought not to want to do it, because her sister State may come along and do the same thing.

Mr. ADAMSON: Well, my question to you is, would not an order from the Interstate Commerce Commission or from the courts of the country, have exactly the same force and effect upon the corporation doing that, regardless of where its charter was?

Mr. THOM: Undoubtedly that is so, but the order the Interstate Commerce Commission may issue is limited by the statutes of the United States. They cannot go beyond the statutes.

Mr. ADAMSON: But we can change that statute without changing the incorporation laws?

Mr. THOM: Undoubtedly, and I have never contended you could not. I have never contended that it was necessary, as a measure of putting into effect the law, that you had to change the incorporation law. You can extend the power of interstate commerce control over the local rates in the States without incorporation——

Mr. ADAMSON: Well, then, is not this a possibility—I do

not mean to say that exactly, either—but is it not a possibility that while it is admittedly possible that the Interstate Commerce Commission, under authority of Congress, or the power of Congress to regulate all State corporations, that it might be possible, under a Federal corporation, to prevent the State from doing some of those things which they have a right to do now?

Mr. THOM: I do not think it is possible to do that under a well-balanced law of Congress, because I think the law will expressly reserve to the State all those things that Congress feels it ought to have, and, Congress represents the States, you know.

Mr. ADAMSON: It has been generally accepted that the power of Congress to regulate these matters rests upon the clause of the Constitution giving the Federal Government power to regulate commerce, and it has been said that the power of the Federal Government in that respect has gradually grown, but I have never understood exactly what was meant until I came to Congress and went to consider the commerce clause of the Constitution, and my own judgment is if this republic is ever sent to the bad, it is more likely to occur through the commerce clause of the Constitution than any other. If Congress may control everything in connection with the police powers of the States, and then itself prescribe practically what those police limitations are, Congress being always in session with power to change the law, it may grow and grow and grow until the idea will become prevalent—and it seems to have become quite prevalent among the railroad executives now—that consolidation of power is what we should have.

Mr. THOM: Judge, I do not think there is a student of public affairs who can fail to know that the very difficulty now that is becoming a large difficulty is coming just in the opposite direction. We had, at one time, certain influences that were operating to nationalize this country. In the first place we had slavery. There was one sec-

tion of the country that approved of it; there was another section of the country that disapproved of it.

Mr. ADAMSON: There was a good time to mention Georgia again. She was opposed to slavery and liquor at the time the Constitution was adopted.

Mr. THOM: There was another section of the country opposed to it, and that issue was so great as to make one party opposed to the extension of the national rights and the other party in favor of it. In other words, there was then the States' rights party and the national party. Then we came along, at that same time, to the tariff question. There were certain agricultural States that believed in free trade. There were certain manufacturing States that wanted a tariff. The one party wanted to preserve free trade through the power of the States, and the other party wanted to extend a protective system to the power of the nation, and there was an influence in favor of nationalization.

Then we came along to the period of reconstruction. There were, at that time, certain States that wanted to limit the power of the nation in respect to reconstruction. There was another party that wanted to insist on a large delegation and application of the national power, and that made a national issue. Now, all those things have disappeared. The South, which generally was on the other side, has gotten manufacturing interests, and its real view is divided on the question of the tariff, like any other section of the country, and with the disappearance of those issues, which have divided the country on the lines I have mentioned, it is now a fact that local conditions elect a man in Massachusetts, just like local conditions elect a man in Georgia, and every man in public life has reference now to his local conditions rather than to national conditions, in considering the forces which must keep him in public life or put him out of public life, and therefore, today, the influences in Massachusetts for local power are just as operative as they are in Virginia or in Georgia, and the result has been, instead of having a

division between the people that are nationalists, and people that are not, in this country, we have now the common judgment of the country, divided on whether or not they can best use the national power to do what they want to do, or the State power to do what they want to do. If they think they can use the national power to get a child-labor law, they will use that instead of the State law. If they think they can use the national power to get universal prohibition, they will use that. In other words, there is no philosophical division of the States in this country any longer between those who believe in national power and those who do not believe in national power. It is a mere question now which they can use to better advantage, and our country down yonder will as soon lay hold of the national power to carry out an object which they think they can acquire better in that way, and extend the national construction of the constitution in order to do that, as any other section of the country, and so the danger now is not from a division of the parties in respect to national issues, but there is an entire disregard of that school of interpretation of the Constitution which divides parties on the one hand into federalists and the other side into States' rights people, and the question comes back, in every locality, "which can we use best, the National Government or the State Government, in order to attain our purpose," and no interpretation of an academic nature of the Constitution is allowed to stand in its way, and I believe that the tendencies of this day, instead of towards federalization and the vesting of power in the Federal Government, is just the other way.

Mr. ADAMSON: It seems to have had a different effect, judging from the experience of the railroad executives. You remember, along when you say the Southern Railway leased you, we were trying to amend the old Act to Regulate Commerce, and the representatives of the railway companies who appeared before us claimed that we were violating the States' rights doctrine in reference to local control

and States' rights. We went ahead and legislated, but before it was over, litigation had started in the various States, and the last contention made was that it was a Federal matter and not a State matter.

Now, you have said that they have all come to the belief that this is a matter of getting all the control of the transportation companies—the entire control of them—into the hands of the Federal Government.

MR. THOM: I did not quite say that. I said that in all features that would substantially affect their service to the public——

MR. ADAMSON: My recollection is also that at that time they were opposed to arbitration. More recently they have come to the idea that the federal provision for arbitration should be extended——

MR. THOM: You cannot at all criticise anybody——

MR. ADAMSON: I am not criticising you. I am just getting the trend of historical and chronological events.

MR. THOM: I understand some members of Congress were in favor of arbitration a few years ago that do not believe in it now (laughter).

MR. ADAMSON: I remember very well that in full accord with the railroad view at that time I helped defeat the Townsend Bill for compulsory arbitration.

MR. THOM: Did you vote for the Newlands Bill two years ago?

MR. ADAMSON: I do not remember. I was not a ferocious advocate of it.

MR. THOM, you are familiar with the efforts we have made to regulate stocks and bonds?

MR. THOM: Yes sir.

MR. ADAMSON: The House passed the Rayburn Bill once and sent it to the Senate, and we have reported it from our committee again and have it on the calendar. Don't you think, with some amendments which you have thought about, if that bill became a law, that we could have an intelligent control of the financing of corporations?

Mr. THOM: Judge, I attempted to develop in the remarks which I made, the difficulties which seem to me to be inherent in that situation. I believe, in a very ample way, in the constitutional power of Congress to control that subject. I argued that before your committee.

Mr. ADAMSON: Yes; I know you did.

Mr. THOM: And I argued it before every committee of Congress, and I have attempted to facilitate, in every way that my powers would permit, the adoption of a single system of Federal regulation of the issue of securities. I believe that that law would have been absolutely constitutional. I cannot close my eyes, however, to the importance of having a law on that subject, not in the interests of the railroads alone, but in the far greater interest of the public, which will be universally accepted as constitutional, and in spite of men of the highest legal eminence who believe that such a system would not be accepted by the investing public until it is finally endorsed by the Supreme Court of the United States. Now, are we going to ignore that legal view? Can we safely do that? I know your constitutional views and mine agree on that subject. We both believe that the Federal power is ample to do this thing we are talking about, but we are both under responsibilities which rest upon us, respectively, you to represent the great public interest in your official position, and I as responsible for the successful provision of means for the performance of the public duties which rest on the instrumentality with which I am connected and a part. We are both supremely interested in having a system of financing the railroads that will be universally accepted. I know this will not be universally accepted, and therefore, as a means of getting the thing which will be universally accepted, I believe that incorporation is a wise step on the part of the Federal Government.

Mr. ADAMSON: But not necessarily one?

Mr. THOM: I do not think it is necessary. I have your

constitutional view on that question, Judge Adamson.

MR. ADAMSON: Mr. Thom, your idea is that investors, looking at a bond signed by a Federal corporation, would at first blush, naturally regard it as more important, or more reliable, than a bond issued by a corporation under local authorities?

MR. THOM: That view has not specially impressed me.

MR. ADAMSON: He could understand it better?

MR. THOM: I have never seen any hesitation on the part of investors to unduly honor anything a State did about that. That is not my difficulty. My difficulty is, first, that we cannot possibly be subjected to the necessity of going to four or five authorities without losing time that is most valuable and which is absolutely essential to our securities, first.

MR. ADAMSON: Is that the only difficulty?

MR. THOM: No, sir; I say, first. Now, second, I think moreover that if it comes to pass that the authority of the National Government, which is so created as to be exclusive of the necessity for any other approval, if that assumes to contravene some charter power of a State court; if it exceeds the authority granted by the statute of the State in creating the corporation, that is a question raised as to the validity of the order of the Federal corporation, or of the Federal body, and therefore a question raised as to the validity of the security issued, which will not be determined by the interested parties.

MR. ADAMSON: Is that true, although an act of Congress has said that that corporation shall be required to do it?

MR. THOM: It is true that there will be that difference of opinion about it? In my judgment, which is in accord with yours, I have no hesitation whatever in forming my opinion as to the way the Supreme Court will decide.

MR. ADAMSON: I know, but the investors you say——

MR. THOM: The investors will wait until they have that question decided.

MR. ADAMSON: Although an act of Congress has authorized it?

Mr. THOM: I think so. You will have a period of uncertainty, a confusion of this most important matter where traffic is waiting for a supply of cars, and you can not get the money to furnish them until you go to the Supreme Court of the United States, and I do not think it is wise, when we have got a way of avoiding that for us to incur that difficulty.

Mr. ADAMSON: The same argument of Federal control in order to prevent diversity and make uniformity it would seem to me would apply to all other transactions with equal force, would it not? For instance, I own a little land in some towns in my State and some in Senator Robinson's State—a very little—some in Senator Underwood's State, and the city, town, and county, in each State imposes a different rate of taxation, and all the three States differ in all these respects, and yet I have got to keep up with them.

Mr. THOM: Yes, and that is your entirely private matter, the public is not interested in it.

Mr. ADAMSON: I know, in different States entirely, and the argument is that it ought to be made easier to attend to my business, and it looks to me like it ought to have some consideration.

Mr. THOM: I do not think so. I am too much of a States right man to think that. I feel we have no standing here if we come to present our own private interests in this matter of financing. But if it is true, as I believe it to be true, that there is a tremendous public interest in our capacity to adequately finance and to promptly finance in order that we may get the means of furnishing the cars and tracks, and the yards and other facilities which you want for your three farms——

Mr. ADAMSON: Yes, and ought to have them.

Mr. THOM: —then it becomes a public interest and must be considered from the standpoint of that public interest, and the thing that the public interest requires is a guarded system of supervising the issue of these securities so that

there may not be any improper exploiting of the credit of the companies, and that the method shall be a prompt and workable one so that the public needs will not have to wait because of unnecessary red tape.

Mr. ADAMSON: I enjoyed your description of the growth of the Southern Railroad, with which I was familiar before you were; I was with it when it started—not associated with it, but I am acquainted with it, and I have admired it all along, and I admire its liberality and its public spirit and all that perhaps above all other railroads. There are great systems in this country. And you described it so beautifully as growing up in harmony and happiness and prosperity under the laws of eleven different States, the present system.

Mr. THOM: I do not recognize my picture, Judge Adamson.

Mr. ADAMSON: I want to ask you the advantages of the consolidation of that large number of roads, I want to ask you if the consolidation of all of them into one management reduces greatly the expenses of administration?

Mr. THOM: Immensely.

Mr. ADAMSON: Does it do that by dispensing with the services of men, officials, presidents and general managers and lawyers and train operators?

Mr. THOM: Well, that is a very small part of it, Judge.

Mr. ADAMSON: Does it dispense with them?

Mr. THOM: It extends executive authority over tremendous areas of lines, and in addition to that, however, it enables you to divide the operation of those properties into appropriate divisions where rolling stock will be safe, where locomotive power will be safe, where matters may be co-ordinated, where connections may be made, where yards can be simplified, and in the thousand and one other different ways making the thing operate as one co-ordinated system?

Mr. ADAMSON: Is it not true that sometimes in making

a division that a fat town or section may be coupled with a lean town or section and make the whole division more profitable?

Mr. THOM: Well, I have no such illustration in my mind. I do not know exactly to what you allude.

Mr. ADAMSON: Is not that true that sometimes a division is so constructed that one part of it, one part of the railroad would not pay and one part of the railroad did pay, and that together they can be made to operate profitably?

Mr. THOM: The history of almost every railroad in this country is that when started it did not pay, and that then when you got feeders they did not pay. Now if you take one of those feeders and consider merely its revenues, what it earns on its own line, it is a failure. But when you take that traffic and send it under one ownership 5,000 miles over some other parts of the line owned by those people, the earning on all of them will justify the parent company in keeping up that feeder because of the revenues it gets on the balance of its line for the great haul it makes of that small contributor.

Mr. ADAMSON: Then a hodge-podge of different lines and parts of lines will enable the contribution of those that do pay to help you run successfully those which would not by themselves pay?

Mr. THOM: Yes, it does, for the feeder's contribution is not merely what it earns itself, but the contribution that its traffic makes over the whole long haul that is carried over the entire haul.

Mr. ADAMSON: Of course it delivers business to you and you make a profit on the long haul?

Mr. THOM: Yes, sir.

Mr. ADAMSON: You have that advantage, and the advantage that you economize by dispensing with men and officials, and what other advantages?

Mr. THOM: And also you economize by consolidating the

terminals, points of connection, and the more economical use of your rolling stock, they all go to make it a much cheaper method of operation?

Mr. ADAMSON: You consolidate the railroads in eleven States, the process which you have described by which that was done was sometimes an insolvent railroad would go through the mill, and would be acquired, either through the mill or voluntarily. I suppose if lean times should come you would be able to acquire other roads in the same way?

Mr. THOM: The policy of a great many roads in this country now has turned away from the policy of extension into the policy of intensive improvement of their facilities within the territory they already occupy. Some railroads have come to the conclusion that the extension of lines has gone as far in respect to that particular system as it ought to go, unless they have the means to fully develop the properties that they have already acquired and make them thoroughly serviceable within the territorial limits that they already occupy. Now I know when Mr. Finley came into the presidency of the Southern Railroad, that he deliberately adopted the policy of acquiring no new lines, but of improving the lines that he had already acquired, all the money he could raise he put into improving the lines within what was then known as the system.

Mr. ADAMSON: If it is advantageous and profitable for everybody to consolidate railroads in eleven States, why would it not be advantageous and profitable to make still larger consolidations?

Mr. THOM: Because it is always a question of wisdom and human endeavor involved, and a man has got to look at all the conditions that surround him and determine whether or not wisdom leads him in this direction or that. Frequently there is a mistake in the judgment, but at last it must be decided as a question of choice between two courses. One man will think that it is to the interest of the system to get into a certain market; another man will think that it

is to the interest of the system to improve its methods and get to the market which it already reaches. That is a matter of judgment.

Mr. ADAMSON: If you were to consolidate with the Coast Line, the Air Line, the Chesapeake & Ohio, and the Norfolk & Western, you still would not be much larger than the Pennsylvania system, would you?

Mr. THOM: I have never compared those lines.

Mr. ADAMSON: There are systems in the country a great deal larger than yours, are there not?

Mr. THOM: Yes, sir.

Mr. ADAMSON: If you are going to take out a Federal charter under an act of Congress, would you take out one for each one of the corporations you acquired, or would you take it out for your entire system?

Mr. THOM: The system which I would adopt would require each corporation that now exists to take out a Federal Charter, but I would also provide the machinery by which under the direction and with the permission of the Interstate Commerce Commission they could consolidate.

Mr. ADAMSON: Ultimately go into one?

Mr. THOM: Ultimately go into one, just so far as the Interstate Commerce Commission approved.

Mr. ADAMSON: If consolidation is desirable and capital is more easily enticed by a great——

Mr. THOM: Do not talk about enticing, Judge, we do not want to——

Mr. ADAMSON: Well, less repelled.

Mr. THOM: Let us say attracted.

Mr. ADAMSON: By one strong Federal corporation, why have so many, why not have just one great big one?

Mr. THOM: Because that is the only method you can pursue with convenience. What Congress would be obliged to say would be—you have got to take the situation as it is today and to say that no railroad corporation shall, after a day which Congress fixed to engage in interstate commerce

unless it takes out a charter under this act. Now you could not say, as a preliminary to taking out a charter under this act, you must find some way of consolidating before you take it out. You must say you must come in here and then when you come in here I will give you the facilities of consolidation.

Mr. ADAMSON: Do you propose to go into the policy by which the Federal Government would indulge in prohibition, by which carriers would engage in interstate commerce——

Mr. THOM: To that extent, yes.

Mr. ADAMSON: Has not our policy heretofore been to force them, primarily, all to make through routes, to have joint rates, before they go into business at all?

Mr. THOM: This would be a very cogent invitation for them to continue. They are not going out of business. Some people have suggested as a method of doing this, the taxing power, taxing the corporation that stays outside, like they do the bank. We believe that the best method is to say, you shall not engage in interstate and foreign commerce—that is, 85 per cent of your business—you shall not engage in that business unless you come in under Federal charter, and we have no fear whatever there would be any of them left out.

Mr. ADAMSON: Then, if you did not do it, what would you do with that gap?

Mr. THOM: With that gap?

Mr. ADAMSON: Yes.

Mr. THOM: There will be no such gap, judge, but if there is, there will be found some other way of filling it out. In other words, let us find out how the gap would be made.

Mr. ADAMSON: Would it not be a good, old, honest, plain way to start this thing, if you want Federal incorporation, just for somebody who wants to build a new railroad to apply and get a Federal corporation and go ahead and build one, and show how it works?

Mr. THOM: They did that many years ago.

Mr. ADAMSON: I know, but you want to do it again.

Mr. THOM: Why, that did not solve the problem.

Mr. ADAMSON: It obviates all of these troublesome questions that you are talking about, how to take somebody else's property and turn it over to a new corporation.

Mr. THOM: It does not touch the problem. Here are 250,000 miles of railroad in this country, in round numbers. That is the problem you are dealing with primarily. Now, you cannot deal with that problem—you cannot touch that problem—by saying hereafter, when there is a railroad, you must take a Federal charter.

Mr. ADAMSON: Oh, yes, you can. You can forbid any present one to go in that wants to; but I will give you a good suggestion.

Mr. THOM: I will be glad to have it.

Mr. ADAMSON: Suppose you started in north Georgia and ran down through western Georgia and eastern Alabama, to the Gulf, down about St. Andrew's Bay, where they need a railroad—everybody along through the country—and take a Federal charter and build that railroad. You can get money so much easier on a Federal charter, and people have been trying for generations to get that country opened up, and surrounding railroads tell them there are railroads enough and they cannot get capital in it at all, and it is the best place I know of in the world to try the attracting effect of a Federal charter.

Mr. THOM: Judge, my proposition——

Mr. ADAMSON: You will not have any of these questions of taking over the property of adjacent corporations.

Mr. THOM: No, and you will not deal with your problem either.

Mr. ADAMSON: Oh, yes.

Mr. THOM: Now, my proposition is to deal with your problem by requiring that that company that you allude to shall be a Federal corporation, because under our recom-

mendation there will be a necessity for its being a Federal corporation and the machinery would be there for the purpose of enabling it to be a newly incorporated agency of commerce.

Mr. ADAMSON: Is there anything in the way of your building it now, under Federal charter?

Mr. THOM: Yes, sir.

Mr. ADAMSON: What is it?

Mr. THOM: We have not got a statute. We can, of course, get one from Congress, maybe, but that is not the point with us. We have a problem already existing. Here are 250,000 miles of railroad with which you are primarily interested. That is your problem. You have got to strengthen and perfect that for continued usefulness. You cannot say, "We will put that aside and wait until we see how the railroad from north Georgia to Alabama turns out." If it is a problem, why, you have got to deal with that. If it is not a problem, there is no justification for your doing it. If I am mistaken in thinking that the country has a problem on its hands now, all of the contentions that I have made are ill founded. I think you have got a problem. I have attempted to show that you have got a problem as to the present 250,000 miles of road. Now, to suggest to me that that problem should be entirely ignored and we should attempt to deal with the situation by operating under a Federal charter from north Georgia to Alabama, does not at all reach the question. We have already tried that in a charter to the Union Pacific. We have tried——

Mr. ADAMSON: That was Government aid, was it not?

Mr. THOM: Government charter.

Mr. ADAMSON: The Government got behind it?

Mr. THOM: No, sir; they chartered it.

Mr. ADAMSON: I know they did it.

Mr. THOM: And they chartered the Texas & Pacific. We know what the history of this country has been in respect to individual roads under Federal charters, but that is not our

problem. That is not the problem that we think exists, and, therefore, we do not have to go back to a charter on new roads to know how Federal charters act. We have already done that.

Mr. ADAMSON: In talking to Senator Newlands—Mr. Chairman Newlands—a few minutes ago you agreed with him on the proposition about the relation respectively between bonds and stocks and physical property. I wanted to ask you if I understood you right, that bonds and stock stood for the same thing, and, therefore, if one was taxed the other ought not to be?

Mr. THOM: I was very careful to draw a distinction in what I said to the chairman on that subject.

Mr. ADAMSON: I misunderstood you, then. Now, if bonds and stock amount to the same thing, the stock is of no account if the bonds are good. As I understand this, a railroad, like a man, makes a debt, but he expects to earn profits enough on the property to pay off the debt and still have the property. So, is it not true that the man who holds the debt has good property if the debt is good, and the man who owns the stock has good property if the property is solvent, and it earns enough to pay?

Mr. THOM: Undoubtedly; and nothing I have said to the chairman was contrary to that.

Mr. ADAMSON: I must have misunderstood you. I thought you agreed with him that they both ought not to be taxed because they represent the same thing.

Mr. THOM: No, I made a distinction between the two classes of property in what I said to the chairman.

Mr. ADAMSON: Now, in relation to your method of acquiring these railroads from the present owners—it is about time to adjourn, though, and I will not go into that.

TUESDAY, November 28, 1916.

The Joint Committee met at 10:30 o'clock a. m., pursuant to adjournment, Senator Francis G. Newlands presiding, also Vice Chairman William C. Adamson.

Present: Senators Robinson, Underwood, Cummins, and Brandegree; and Representatives Sims, Cullop, Esch, and Hamilton.

Mr. ALFRED P. THOM resumed the stand.

The CHAIRMAN: The committee will come to order.

Mr. ADAMSON: You may proceed with your interrogatories.

Mr. ADAMSON: Mr. Thom, before proceeding to the other subjects as to which I was about to interrogate you when we adjourned yesterday, I would like to ask you a little about one phase of your testimony that I suppose was covered by the Shreveport case. I read a good many pages, and in fact several volumes about that. The courts and Commission seem to be playing hide and seek and bull frog and tumble about it. I want to ask you if there is any authority in the Constitution, apart from your conception of the commerce clause, that would authorize the Federal Government to go inside a State and raise a rate between two intrastate points?

Mr. THOM: There is the clause of the Constitution forbidding any discrimination between ports, which might do it in some cases—it might have that effect in some cases.

Mr. ADAMSON: Of course there are some ports in Texas and some in Louisiana. As I understand it, the point touched by the Shreveport case did not affect ports; they were internal points.

Mr. THOM: I did not understand you to confine your question entirely to the Shreveport case, but generally.

Mr. ADAMSON: Of course your answer about ports would be an answer in some cases, but where points inside the State are not ports, what authority would you find?

Mr. THOM: Then the commerce clause is the only one that I know of.

Mr. ADAMSON: Then the contention of these two insist on that construction would be, in effect, that if the internal business of a state is prosperous and local business could be carried at a profit at a lower rate than it could between similar

points in sister States, that that business and that State ought to be required to contribute the equality under the commerce clause of the Constitution?

Mr. THOM: I do not understand that to be the contention, Judge.

Mr. ADAMSON: Well, on what theory can they insist that the internal business of the State of Texas itself is so prosperous without affecting or touching anybody else that it would be a reasonable and just rate and profitable between those points—on what theory can you say that you are compelled to go outside and compare that with somebody else's condition and raise the rate that is profitable there?

Mr. THOM: I understand the situation to be this: Let us take the condition that you refer to, within the State of Texas, of a prosperous business, and let us compare that with the prosperous condition of business between the cities of New York and Philadelphia, where there is great density of traffic. Now, one of those businesses you refer to is intrastate; the business between New York and Philadelphia is interstate. I understand that the view of the Constitution is that there shall be no reference to the line of the State in determining the conditions on which commerce should move, and if the conditions within a State relating to a larger traffic are such as to justify a lower rate, that rate will be made lower, although it is within the State, just as the rate between New York and Philadelphia perhaps ought to be made lower than the rate between Petersburg and Norfolk. One is in a State and the other is outside of it. The point of the Shreveport case is that there was a deliberate policy on the part of the State of Texas to exclude Louisiana points of production or distribution from the markets of the State of Texas, and that the power over rates was used for the purpose of controlling Texas markets for Texas points of distribution.

Mr. ADAMSON: Well, what was the motive for them to do it if there was something in the letter of the law and Constitution as to the rates established?

Mr. THOM: There was nothing in the letter of the law to justify it.

Mr. ADAMSON: The Constitution says that Congress shall regulate traffic between the States or among the States and not within the State of Texas.

Mr. THOM: Undoubtedly it says that, but it cannot be permitted—no State can be permitted to so regulate commerce within its borders as to have an effect on commerce beyond its borders, because if it does Congress cannot regulate the commerce between the States. That is most forcibly presented by the Supreme Court of the United States in the Shreveport case, and if you will let me I will give you further record with respect to that argument.

Now, here they are; here is the commerce within the State of Texas, that moves at such a low rate that either Congress must bow to that rate in fixing its own interstate rates, or cease to regulate the commerce over which it has jurisdiction. Now, if it bows to the will of the State in respect to the rate, then it has accepted the standard of the State as to interstate commerce, and has given up its obligation to the people to regulate interstate commerce. If it does not bow to that will of the State in respect to that matter, then it must create the standards on which both shall move.

Mr. ADAMSON: Now I fully understand——

Mr. THOM: Because the two classes of business are inseparable one from the other.

Mr. ADAMSON: I fully understand your line of reasoning applicable to a continuous line over the same tracks. If there were a through line through the State of Texas, or one State on this side and one State on the other side, and the State of Texas had a lower rate inside of the State locally, then a Federal commission would not regard that lower rate in making up the through rate, but would allow the Federal regulations to govern the shipments entirely through the State. For instance, I at one time started to New Orleans in a hurry, and got down to the depot to go to West Point. I wanted

to get an excursion ticket. It had been selling at \$15. The rate in Georgia to West Point was 2 cents, and at that rate they make a good living out of it. From West Point through Alabama to the Mississippi line it was two and a half, and to Mississippi it was either two twenty-five or two and a half. They charged me three cents a mile solid from Newnan to New Orleans in interstate business. We can understand that the Federal commission upholds that, because they say, in making through transportation over that through line, they do not have to regard those local State rates. But they do not order those States to raise their local rate as to intrastate traffic. They just state in making the through rate it would be disregarded.

Mr. THOM: I suppose it could be realized that the whole purpose of the Constitution would be disappointed if any one State had a right to exclude people across the borders from dealing with its people.

Mr. ADAMSON: Was there any evidence, internal or external, connected with the statute regulating that rate in Texas to show that their purpose was an embargo on outside business?

Mr. THOM: I understand that to be a conceded part of the argument; that they claim that right to absolutely hold Texas markets for Texas distributing points. At any rate, that was the basis on which the matter was treated in the Supreme Court of the United States and by the Interstate Commerce Commission.

Mr. ADAMSON: When I was examining you yesterday, I had misplaced my book in which I had scribbled some allusions to your testimony, but I can hardly read them, and I do not know exactly what reference they had to your testimony, when I can read them; but I notice that you talked about the diversity of State statutes. I will ask you if the railroad companies have not been as active as any other citizens always in looking after the legislation in the various States?

Mr. THOM: Judge, the railroad companies, of course, must try to put their cases before the legislators——

Mr. ADAMSON (interposing): They have a right to do that. I just asked you if that is not the fact?

Mr. THOM: I assume that the legislators want every point of view before they come to pass upon any matter of public importance; but I cannot too strongly emphasize here, if you will permit me, the utter lack of justification, in the interest of the people who need a perfected system of transportation, to try and make every question turn upon whether or not heretofore the people have been mistaken or the railroads have been mistaken.

Mr. ADAMSON: I do not think that is involved in the question I asked you. I have quite a different purpose in asking you that question.

Mr. THOM: If there has been a system most objectionable in the management of these railroads, that in no way answers the need of the public for facilities in the future.

Mr. ADAMSON: I have not come to that, either. I just asked you the fact, if you have not exercised your constitutional rights, as other citizens, to look after legislation in the various State legislatures—any legislation that affected the railroad company. You have a right to do that.

Mr. THOM: I have no doubt that whenever a case has come up, the matter has been presented to the legislators by the railroads, as best they could. I have no more knowledge of that than you have.

Mr. ADAMSON: Do you not think that the light that these very able railroad men were able to shed on the deliberations of the State legislators had some influence on legislation?

Mr. THOM: I have no doubt on earth that it has had a beneficial influence, to bring out a more comprehensive view of the situation.

Mr. ADAMSON: For instance, you alluded to the full-crew law. How many States have that?

Mr. THOM: I do not know, but a good many have it, and a good many have not.

Mr. ADAMSON: Do you not suppose that the enlightened efforts of the railroad advocates before the legislatures prevented its enactment in many States?

Mr. THOM: They may have in one State and not in another. Enlightenment does not mean to be the test, because the enlightenment was the same in all the States, but the results were different.

Mr. ADAMSON: They used their light everywhere alike, but all substances and surfaces do not receive light as susceptible.

Mr. THOM: Therefore, in dealing with a problem that is universal, we ought to get to a place where light has the same effect everywhere.

Mr. ADAMSON: I will get to that argument later, but I will stick now to this one question, if you will answer me. There is no doubt, then, that the efforts of the railroad companies themselves in the various States, using their influence in some places where it would take, and some where it would not, has had some effect in producing this diversity of legislation?

Mr. THOM: Yes, but the difference between——

Mr. ADAMSON (interposing): Is that true?

Mr. THOM: The difference in effect would be either to accept universal disaster or try to obviate it in some places.

Mr. ADAMSON: I am not talking about the result; I am talking about the fact.

Mr. THOM: You know as much about that as I do.

Mr. ADAMSON: I know, but I am not the witness.

Mr. THOM: But you must not interpret——

Mr. ADAMSON (interposing): I know all the subjects that you are posted on, and when I have a good witness I want to prove something.

Mr. THOM: Undoubtedly, if you want to know that, when there is a case involving a railroad, and it is presented to two different legislatures, the result in one case will be different from the result in the other case, and diversity will be created which is hurtful to the whole public.

Mr. ADAMSON: And yet, if your influence had not been

exerted in all those places, there might have been different action in some places?

Mr. THOM: And there might have been universal disaster instead of our having diverted it in some cases.

Mr. ADAMSON: On the other hand there might have been universal blessing?

Mr. THOM: That depends on whether it is an universal blessing to put a charge upon the commerce of this country everywhere equal to the charge that is put upon it by Pennsylvania and New Jersey for this extra-crew law.

Mr. ADAMSON: As you have mentioned the extra-crew law, is your chief objection to that—I mean, the objection of the companies, because you claim you do not object, personally, to anything—but is the main objection to that the expense that it puts on the roads?

Mr. THOM: Oh, yes; certainly.

Mr. ADAMSON: Are you familiar with the operation of these long trains on these roads?

Mr. THOM: I have never operated any, but I have looked at them as they went by.

Mr. ADAMSON: Did you ever see one with 75 or 100 cars in it?

Mr. THOM: I have, indeed.

Mr. ADAMSON: And two engines at the head of it?

Mr. THOM: Yes.

Mr. ADAMSON: How many crews run on one of those double-headers of a hundred cars?

Mr. THOM: I do not know; but they are all automatically controlled by a system of brakes.

Mr. ADAMSON: That is not the question; I will come to that later. The question is: How many crews are on them?

Mr. THOM: I do not know.

Mr. ADAMSON: There are not as many as there would be if each engine just had as many cars as it could carry and run along, are there?

Mr. THOM: There are not as many as there would be?

Mr. ADAMSON: Yes.

Mr. THOM: There are just as many as there would be.

Mr. ADAMSON: Then you do not save any crews?

Mr. THOM: What?

Mr. ADAMSON: I say then you do not save anything in the number of crews?

Mr. THOM: By what?

Mr. ADAMSON: By the double-headers and a hundred cars in a train?

Mr. THOM: No; we do not make the crews less than we would on a train with a single engine.

Mr. ADAMSON: Where is the expense, then, of what you call the "full-crew law"?

Mr. THOM: Because it requires more people than are necessary. They say they want—that it is a good thing to have an extra man to make up a hand at bridge in the caboose; that he can stay there and play cards during the trip.

Mr. ADAMSON: You are not prepared to say just how many men constitute a crew?

Mr. THOM: No; I am not an operating man. You will have people here on that subject.

Mr. ADAMSON: I know that. I do not want you to answer anything that you do not know, of course. I just asked you if you are prepared to say.

Mr. THOM: No, I do not know how many men. I might guess pretty accurately, but I am not an operating man, and I am not discussing operating questions.

Mr. ADAMSON: Then I will go back into the field where you are skilled. Yesterday you made a distinction in your process of transmogrification——

Mr. THOM: Between the what?

Mr. ADAMSON (continuing:) —your transmogrification from State corporations to Federal corporations; you made a distinction between condemning the property and the stock, on the one hand, and local taxation on the other. You argued that because these people invested with knowledge that Congress had the constitutional power to regulate them *ad libitum*——

Mr. THOM (interposing): No; not *ad libitum*; within constitutional limitations.

Mr. ADAMSON: Well, does not Congress sort of take its own view about the Constitution, when it is making law?

Mr. THOM: Sometimes it is checked up a bit in the Supreme Court.

Mr. ADAMSON: I know, but not until after Congress acts?

Mr. THOM: No; they could not do it before they act.

Mr. ADAMSON: You say they made their investments with the knowledge that Congress had the constitutional right to regulate commerce, and that, therefore, it is all right to condemn them, dislodge them, and put their effects into a Federal corporation; then you say that you do not advocate taking the taxing power away from the States at all. I just want to ask you if the States did not go into the Union and make their delegation of authority and reservation of authority with the same notice, that Congress had the power to regulate commerce in every respect?

Mr. THOM: Yes, and the Congress would have the power to control the question of taxation, too. My remarks on that went to the wisdom of the exercise of that power.

Mr. ADAMSON: As a matter of policy?

Mr. THOM: To the wisdom of the exercise of the power.

Mr. ADAMSON: You are like St. Paul: All things are right unto you, but all things are not expedient?

Mr. THOM: I would like to be like St. Paul, but I have not fully found the parallel.

Mr. ADAMSON: Now, the obstacle to taxation of the physical property or the stock would be the inhibition against direct taxation, would it not?

Mr. THOM: What is that? I did not catch that.

Mr. ADAMSON: The obstacle to the Federal Government taking over the taxing power would be the inhibition against direct taxation?

Mr. THOM: No. That could be very easily accomplished, without running counter to that.

Mr. ADAMSON: By an income tax?

MR. THOM: By a tax on the gross earnings as an excise tax.

MR. ADAMSON: I am glad you do not advocate that.

MR. THOM: I try to keep within the Constitution, Judge.

MR. ADAMSON: You say that would be constitutional.

MR. THOM: What?

MR. ADAMSON: To interfere with the taxing power.

MR. THOM: That is a different thing from interfering with anybody else taxing and imposing upon yourselves.

MR. ADAMSON: I want to ask you now about the disposition of the property of those State corporations. You condemn a road like the one the newspapers are talking about now, down in the Southwest—the New Orleans, Texas & Mexican Railroad. That is, when it is found to be a little over seven million dollars in debt, with capital stock of twelve million dollars, and bonded indebtedness of forty million dollars. I would like to know what disposition would be made of a case like that, in your condemnation proceedings?

MR. THOM: I do not think any condemnation proceeding is necessary, Judge.

MR. ADAMSON: What would you do there? Bankrupt it?

MR. THOM: No. I believe that you are obliged to recognize the things that have happened in this country. You are obliged to proceed from henceforth with respect to the rights—whatever those rights are—that have already been created under the laws of the various States.

MR. ADAMSON: Leave them undisturbed, as they are?

MR. THOM: Yes. You would not get rid, by the idea that I am suggesting, of any of your difficulties in respect to the present statutes relating to capitalization, unless you did this: unless you, in your Federal system of capitalization, issued stock without par value, and gave share for share to the owners of the stock in the State corporations. Of course, the par value of stock means nothing.

MR. ADAMSON: You would not do that by compulsion? You would have to base that on agreement?

Mr. THOM: I do not know how that would be. I think the stockholder gets the exact equivalent of what he has now. That merely gets rid of the nominal capitalization.

Mr. ADAMSON: You thought yesterday or day before, in your direct testimony, that the holders of the stock and bonds would not generally object?

Mr. THOM: That is what I thought.

Mr. ADAMSON (continuing):—to reorganization under Federal charters.

Mr. THOM: Yes; that is my belief; and whether they object or not, they have nothing to do with it; they cannot help it.

Mr. ADAMSON: You would have a right to do it, anyhow?

Mr. THOM: Undoubtedly.

Mr. ADAMSON: Suppose one of those corporations that you were about to condemn, were under the weather, financially; not prosperous—would not bring much under the hammer, either the physical property or the securities; and yet, the holders are hopeful—hope springs eternal in the human breast, you know—and when you drafted a lease into the Southern Railway, it was not a great, big, rollicking thing like it is now; they grow; they have a right to grow. Have not those stockholders and security holders a right to say, "We are looking for better times. Let us alone. We will prosper if you will let us alone, instead of selling us under the hammer"?

Mr. THOM: I have made no suggestion about selling anybody under the hammer.

Mr. ADAMSON: Condemnation means that, does it not?

Mr. THOM: I did not say anything about condemnation. That is an idea that your question produced. I did not say that condemnation is necessary. I do not think it is.

Mr. ADAMSON: I may have confused you, in my mind, with Secretary Olney. Great men all look alike to me.

Mr. THOM: If you will get me confused with him, I will feel perfectly delighted; I will get so much more than I give, that I will be the gainer.

Mr. ADAMSON: What was your proposition, then? One of agreement?

Mr. THOM: My proposition is this: that when the people who obtained a financial interest in one of these railroads authorized to engage in interstate commerce, did so either by the purchase of bonds or stock, they accepted their contract relations, limited by the possibility that Congress might at any time exercise its full power, under the commerce clause of the Constitution, to regulate it.

Mr. ADAMSON: I understand that.

Mr. THOM: That a system of Federal incorporation is a proper system of regulating commerce, and, therefore, they hold their securities subject to the adoption by Congress, under its power of regulation, of a compulsory incorporation system.

Mr. ADAMSON: I understand that.

Mr. THOM: And when Congress does that they must permit their property to come in under that Federal incorporation without the claim of damages against us.

Mr. ADAMSON: I understand all that, but how do you get to the critical point where the transition is to be made? We have suggested an agreement, but if you do not agree then what do you suggest?

Mr. THOM: Here is where we make the transition, and it seems simple to me. First Congress passes a law and then fixes a date when no corporation shall engage in interstate commerce unless it takes out a charter under the national law. Congress having done that, having provided a system of national incorporation, that system should provide for a meeting of the stockholders of the company upon due notice and a vote to be taken as to whether or not they would confine their corporation in the future to business in intrastate commerce or would continue to do interstate commerce and would come in under the Federal regulation. If the majority of the stockholders voted for that, then the machinery for the application of that company for Federal charter ought

to be provided by the Federal act and the minority stockholders would be bound by that action of the majority, because they took their stock subject to the exercise in the future by Congress of its constitutional function of regulating commerce, which regulation is embraced in this compulsory system of incorporation. There is no condemnation in that.

Mr. ADAMSON: But I think there is one fundamental trouble in it. Your plan is all pretty enough if it did not involve prohibiting them from going into interstate commerce. Our policy is to compel them to go in and stay in while your proposition would require a change of that policy and a change of the commerce law. At this time we can make joint routes and rates and force them to do it, and it is our policy to compel every one of them to do it.

Mr. THOM: Yes, and that would be the means and would make your power in that respect much more effective than it is now. You would bring the whole business into interstate commerce under Federal charters at once, subject to the unquestioned regulation of commerce in all the respects you have mentioned. It would enlarge the opportunity for Congress to manage the thing in a homogeneous and comprehensive way, and not in any sense diminish it.

Mr. ADAMSON: Well, I reckon we can not agree on excluding them from interstate commerce as a condition for them to change the form——

Mr. THOM: I think we can agree on the power, and it will be a great source of distress to me, because you are the man to decide it and I am not.

Mr. ADAMSON: Of course I do not decide it. There are twenty good lawyers on my committee that manage me entirely.

Mr. THOM: I am putting you in as a representative, not speaking of you as an individual.

Mr. ADAMSON: I am the humblest servant on the list. Now, Mr. Thom, we exactly agree on the power of Congress, and the power of Congress can make these State corporations

do anything it pleases now without all this trouble and expense of transforming into Federal charters, but I will not continue that discussion with you. I want to ask you now about your plan of administering and regulating, how you will get your corporations changed. I believe you stated that the commerce law and the commission operating under it could not control the Federal corporation any more than it can the State corporation at present?

Mr. THOM: I think the commerce power of the Constitution is sufficient to enable the Interstate Commerce Commission, or any other commission Congress may appoint, to regulate the whole instrument of interstate commerce, even if not incorporated under national law.

Mr. ADAMSON: Then the only other subject I wish to ask you about is your plan of organizing and operating the commission itself. I fully understand, as you do, that the people over the country do not welcome the visits of young lawyers and agents and examiners to hear and pass upon grave questions which they have a right to have a commissioner to hear, and I fully agree with you that there ought to be enough commissioners of ability and experience to attend to all this business. To that end you know our committee reported and passed through the House ten years ago a bill increasing the commission to nine members, with the idea they would divide themselves into sections; that the commissioners would go over different parts of the country and hold hearings, and sections of three could each dispose of cases, unless there was dissatisfaction, when a demand might be made for a consideration in bank of the entire commission. That was never passed in the Senate, and we kept hammering at it until last spring our committee reported it to the House and passed it again and sent it to the Senate. It is still hanging there, although I believe all the railroad companies and the President also said it should not be stayed by this resolution. It has not been passed. What I want to ask you is, would it not be easy to conform practically to your idea, substantially

to your idea, by so enlarging and subdividing this commission and doing the work?

Mr. THOM: Do you mean that alone without supplementing by what I have suggested?

Mr. ADAMSON: Can you not make it practically answer your suggestions?

Mr. THOM: No, sir; the Interstate Commerce Commission assures me that even if the views which I am advocating should be carried out they would still need those two extra members.

Mr. ADAMSON: I say enlarge the commission.

Mr. THOM: Wait a second, please, Judge. Nine members of the commission, nine men can not do the work.

Mr. ADAMSON: Then why do you not make it twelve or fifteen?

Mr. THOM: Because I think the people of this country greatly prefer to have some commissioners resident in their own localities.

Mr. ADAMSON: Can you not select them from different parts of the country?

Mr. THOM: Then they would all be residents in Washington. So far as I am concerned, I am speaking now of the selfish interests of the railroad, not my view of what is good for the country—so far as the selfish interests of the railroads go of course those selfish interests would just as well be protected by a commission resident in Washington, but that does not meet the public demand. The public demand is for the Government to understand local conditions. And this commission here, if it consisted of thirty members, sending out agencies from time to time to different parts of the country, would all the time be felt by the people at large as having men visit them that are not acquainted with their local conditions.

Now my idea is that you gentlemen have got to take—it does not make any difference what view I take—but you gentlemen have got to take a comprehensive view of the needs,

the sensibilities and the views of the people of this country. I believe one of the dearest things which they have is that this Government shall not be a stranger to them; then it must be brought into an intimate and adequate knowledge of their real conditions.

This idea of regional commissions, of high-grade men, appointed by the President and confirmed by the Senate, of men paid in a way to attract the best service to the Government, is to bring to the doors of the people of this country in the various sections the Government that shall pass upon their needs.

Mr. ADAMSON: I should like to be permitted to uncouple the last strong and beautiful sentence of yours and attach the part so beautifully descriptive of home government as against your proposition to transfer the corporations from the States to the Federal Government, and the regulation of rates from the States to the Federal Government.

Mr. THOM: Well, Judge, I am very confident that if you attach them they will look like brothers. They are part of a whole and comprehensive and consistent scheme, as it appears to me. Here we have got this thing of a commission that is not a State affair. In the interests of the whole people it is necessary to be without territorial limitations; it is a way they have learned to do and that they want to do business. The people in my State want to get to the markets of another State; they do not want to get to the markets of my own State, it may be. It may be that we have not got any markets that are sufficiently attractive, so that commerce has found it necessary to pass over State lines without any reference to their being there. The commerce is a thing of nation-wide or world-wide extent and importance.

Now that is one of the things. The way to regulate that, recognizing that it does not halt at State lines, but goes over great transportation movements that are not confined by State lines, and yet understanding at the same time the needs of the people, are the two things to be recognized. One we

do by recognizing the fact that the movement of commerce is not confined by State lines, and the other is to put the regulating body close to the people.

MR. ADAMSON: I think your optimism and admiration for your proposed system is largely justified in your own case, so far as I know, by the practice of your own road. I must say that above any other railroad that I know, so far as I have observed, the Southern Road has accommodated the local necessities, stopped their good trains, let the people ride, and treated them fairly, but your road does not run all over the United States, and I just want to ask you if, under your changed system, excluding Federal regulations and Federal incorporations, what do those local people feel that they can do if you whiz your transcontinental trains through the towns without stopping, and give them a local passenger train that leaves before day in the morning and after dark at night—that does not look much better. They believe they will get a complete redress as opposed to local authority.

MR. THOM: I thought you were against local authority?

MR. ADAMSON: No, sir; not for local affairs. I want Congress to do what the Constitution says Congress is to do, and the States to do what the Constitution says the States shall do, not because I am crazy about State rights or daft on State rights, but because the Constitution fixes it that way.

MR. THOM: Why not have some of the representatives of the regulating power resident in each community?

MR. ADAMSON: The State commission lives there.

MR. THOM: I understand that, but that is based upon the theory that the commissioners ought to be regulated by State lines.

MR. ADAMSON: Not at all; not local commissioners.

MR. THOM: If we differ on that, we differ on the fundamentals.

MR. ADAMSON: Not local commissioners. It is more important for the people in remote counties to get to their nearest town than it is for them to see a load of drummers go

through from Boston to San Francisco, and they are the fellows you have to deal with; they are the fellows you get your verdicts from, if you get any at all; they are the people who first consented for you to build your railroads; they are the people who thought there was some obligation to accommodate and respect them, and they are the people that will be dissatisfied unless you inspire them with confidence about how their grievances are going to be redressed. If one of them is put off a train, or has a pet cow or pig killed, where is he going to be redressed? Now he gets it at home.

Mr. THOM: He will get it at home under any suggestions I have made to you.

Mr. ADAMSON: You are going to propose, then, that you can sue all these Federal corporations through the State courts at home?

Mr. THOM: Yes, sir.

Mr. ADAMSON: And not be removed to distant Federal courts?

Mr. THOM: Undoubtedly; just have those jurisdictions where they are now. I think, instead of there being a fundamental difference between what you are saying and I am saying, it relates only to the line of how much police authority is, under the wisdom of Congress, preserved.

Mr. ADAMSON: No, there is a fundamental difference.

Mr. THOM: My proposition is where a State exercises a power which has no substantial effect beyond its own limits, it ought to continue it, but where it exercises a power, the substantial effect of which is to put its own laws on its neighboring States, it ought not to.

Mr. ADAMSON: There is a fundamental difference in this: representative government means that the local officers are chosen by local people. My proposition is that the local people choose the local administrators, and the local authorities govern the local communities. You are proposing that a central authority, through a central body, shall govern local as well as general affairs, and from a central authority those local people shall be selected.

Mr. THOM: Only those matters in which the authorities in one State extend themselves across their border and undertake to regulate the affairs of another State——

Mr. ADAMSON: Now, how many traffic divisions did you say there are—four or five?

Mr. THOM: There are three classification territories.

Mr. ADAMSON: Only three?

Mr. THOM: Three classification territories.

Mr. ADAMSON: You say there ought to be more commissioners than territories?

Mr. THOM: More regions.

Mr. ADAMSON: How many in all?

Mr. THOM: I have not gone into that, but I think Congress should have quite a number.

Mr. ADAMSON: Just give me an arbitrary figure, for speculative purposes.

Mr. THOM: An arbitrary figure would have no value, Judge. My own idea is——

Mr. ADAMSON: I am talking about a supposititious case—say how many—six or seven or ten?

Mr. THOM: Suppose we say 15.

Mr. ADAMSON: Say 15, then. If there are 15 places where local men ought to work, or a foreign man ought to be sent to the local place to work, or a local man sent to a central authority to work, and you then add enough to stay in town and hold the fort and attend to general business, it does seem to me you ought to select all 15 from all over the country and let them tend to the business in that central section.

Mr. THOM: I do not believe that would be satisfactory to the people. My own judgment is that the fundamental reason for having these regional commissioners reside in their communities——

Mr. ADAMSON: But the big trouble you have there——

Mr. THOM: A great many railroad people take your view. They take your view and say "Divide up this commission here and do not have the local men," because some of them

think in that way you will get a much more independent judgment. My own judgment is we will have to take the risk of that; that we have got to recognize the demand not only because it exists, but because it has a fundamental justification, for having men that are brought in contact with vital affairs and know them by residing among them.

Mr. ADAMSON: The greatest difficulty you will have, Mr. Thom, in getting your program through, is the idea that has been disseminated among the people by those who have been making your arguments, in the papers and elsewhere, about your escaping the appeal, the jurisdiction of 48 different authorities. The idea is prevalent among the people that you are trying to get away from them and run your operations independent of them, and in spite of them, and with no responsibility to them, and they do not like that.

Mr. THOM: I hope after my explanation you will help me get that erroneous doctrine out of their minds.

Mr. ADAMSON: I am glad to get that to your mind, because you will confront it everywhere.

Mr. THOM: I am protesting against the suggestion that this is an attempt to concentrate everything in Washington, and I am telling you the counterview I take on that subject, that it is desirable from every standpoint; from the standpoint of meeting the views of the American public and from the standpoint of meeting a condition which probably demands knowledge on the part of those who govern, of the conditions of those who are governed, to put these regional commissions close to the people, by making them reside in the various regions where they have jurisdiction.

Mr. ADAMSON: I believe the people are not only willing, but desire and demand that the railroads have revenue enough to put themselves in a condition of equipment and safety to do the business of the people promptly and safely, but they are suspicious and they are afraid that they will not be locally respected and protected in their local rights. That is what you have to combat.

Mr. THOM: The President, in making his nominations, and the Senate, in confirming them, ought to safeguard that point.

Mr. ADAMSON: Well, all the President is talking about is about helping you get money, and you are not in such straits now as then. Is not your business more prosperous now?

Mr. THOM: Undoubtedly it is more prosperous now, but the mistake of fixing your standard of regulation by prosperous years, instead of taking into consideration the average conditions that affect these railroads, will be a mistake which will lead to ruin.

Mr. ADAMSON: Would it not be advisable to continue your case, and not argue it during days of prosperity, and wait for lean years to press it on the people?

Mr. THOM: Not at all. Bear in mind not one cent is coming to us from this investigation, if we get all we think we ought to have. This is not a rate case. This is not a case where you are passing on whether we need more or less money. It is a question whether or not you will protect your systems of regulation so that they will reflect the needs at all times, prosperous as well as unprosperous. If there are fundamental conditions that obtain in this matter that are objectionable in this matter, there is no more reason for removing them in prosperous years than there is for removing them in lean years. The question for you gentlemen to consider is whether there is anything in the tendencies of these conditions, as they are now, to really affect the future of transportation in America. Are the margins being absorbed unduly; are there too many fixed charges going on the property; is the margin that is left sufficient to guarantee the American public adequate facilities? You must judge that in prosperous times as well as in lean times, and if that is a fact, the man who really foresees and provides for the needs of the future is the statesman. The man who does that must take note of that now as well as in future times.

Mr. ADAMSON: In prosperous times the atmosphere is not as favorable for considering appropriations for financial relief as in times of pressure.

Mr. THOM: No financial relief is asked for. We are asking simply for perfected conditions of governmental regulation, which will deal with times when financial needs must be provided for, and will not deal with them when financial needs are not to be provided for.

Mr. ADAMSON: But a very able part of your speech was addressed to the difficulty of securing ample capital. I understand you want to be placed by law where you can secure capital.

Mr. THOM: Undoubtedly, but ought we to wait until we are in a position of disaster to provide against this possibility, or should we provide in time to avert disaster?

Mr. ADAMSON: I suppose you do not care to be cross-examined about Government ownership?

Mr. THOM: No, sir; I do not personally—well, I should just as soon be examined on that as anything else, but I do not think my views are of any special value to the committee.

Mr. ADAMSON: I thought I might disprove a thing by examining you on that.

Mr. THOM: I do not believe in Government ownership.

Mr. ADAMSON: That was the idea I had in considering examining you. I wanted to get your testimony on that and your objections to it.

Mr. THOM: My objection is pretty much from the public standpoint.

Mr. ADAMSON: I thank you for your courteous responses to my numerous questions, and I will relieve you from further questions.

Mr. THOM: That is what I am here for. I will give you all the information I have got.

The CHAIRMAN: Mr. Robinson, will you proceed?

Senator ROBINSON: I think it will take me only a few minutes to submit to Judge Thom such questions as I think

are necessary to clarify my mind concerning the very forceful and able statement which he has made to the Joint Subcommittee.

Judge THOM, in your address you discussed the decline of railway credits. About when did that condition first manifest itself?

Mr. THOM: I do not know that I can speak with any accuracy about that, or in any way that will not need some verification, but my understanding is that railway credit commenced distinctly to decline in 1910.

Senator ROBINSON: Did I understand you correctly to charge this decline of credit principally against governmental action in over-regulating through State or national authorities or both?

Mr. THOM: I am told that the activities of all these commissions did not appear much prior to that time. Now, we in the South, have been so long familiar with State regulating bodies that my inclination would have been to put the time much behind the point I mentioned, but there seems to have been, in other sections of the country, a delayed application of these varying systems of regulation, and they perhaps seem to have come to a climax somewhere about the year 1910. In that year, too, there was an increase of \$50,000,000 in wages. There was a determination that railway revenues could not be increased, in the way then proposed, and in a way that a great many investors in railway securities thought they ought to be increased, and the lesson was taught somehow, in some way, that both revenues and expenses of the carriers were beyond the control of the owners.

Senator ROBINSON: Was there also a falling off in the railway earnings in 1910?

Mr. THOM: I cannot recall.

Senator ROBINSON: Do you think, in accounting for this decline in railway credit, in your statements, you have given due prominence to the mistakes and mismanagements on the part of the railway managers and financiers?

Mr. THOM: I do not know how much attention should be given to that. I have no doubt it had a marked cumulative effect.

Senator ROBINSON: I believe you stated, if I understood you correctly, that these mistakes——

Mr. THOM: One minute, if you will permit me to say this in respect to that, at the same time even the charges about that did not affect ten per cent of the mileage of this country. It was a very small proportion, but it was made a great deal of in the public press.

Senator ROBINSON: It would not be necessary that charges should affect the entire mileage or even a large part of the mileage in order to impair the credit if the system was believed to be more or less general, would it?

Mr. THOM: Not if it was believed, no; but I do not understand even that it was charged that it was more or less general. I do not understand it extended to more than ten per cent, and one of the great difficulties in railroad management is that the restrictive provisions of regulation intended to deal with this evil to which you allude affects the people who never were supposed in the most remote degree to be subject to the charge.

Senator ROBINSON: These alleged mistakes and mismanagement, or the public conception of them, was largely responsible for bringing about the era of governmental regulation, was it not?

Mr. THOM: I think very likely—very likely.

Senator ROBINSON: Prior to the basic act of Congress to regulate commerce, known as the act of 1887, Congress had never attempted in any comprehensive way to exercise its power to regulate commerce, had it?

Mr. THOM: It had not.

Senator ROBINSON: Are you familiar, or have you made any study of railroad credit generally, and the conditions concerning railroad credit generally, during the period of non-regulation. that is, prior to the act of 1887?

Mr. THOM: Well, when you ask me if I have made any study, I assume you mean some special study outside of my general knowledge of conditions?

Senator ROBINSON: That is what I mean.

Mr. THOM: No, sir; I have made none outside of my general knowledge of conditions. I knew at that time, and for some years afterwards, it was easy enough to get money to go into new railroad enterprises.

Senator ROBINSON: Increased Federal regulation is now regarded by you as necessary in some respects for the restoration, or the establishment on a securer basis, of railroad credit, if I understand you?

Mr. THOM: That is correct.

Senator ROBINSON: In your opinion, if there had never been any attempt at Government regulation, either upon the part of the Federal Government or the States, that is, if all conditions with regard to regulation which prevailed prior to 1887 had continued to the present, would railroad credit now be on a better and securer basis than it is?

Mr. THOM: Well, of course that is a mere matter of opinion.

Senator ROBINSON: I understand that.

Mr. THOM: But at the same time I am a great believer in regulation. I think that great benefits have come from regulation, and that a great many more benefits can come from perfected regulation. I believe that the railroads, within the limits that they have been constructed, and the public are better off for having adopted a system of regulation. Now the reason I say within limits is this: We must realize that the railroads of this country were built by people who expected in some way to get very handsome returns from their investments. Their hope in that respect was natural—benefited by bonuses of stock—and they expected to be able to work their enterprises up until the stock became worth something. They would not have built them if they had not had that hope. We would not have had railroads if it had not

been for that hope. Now, if here comes along Government regulation and puts an end to that hope and has to deal with the situation that is created by that change of condition, and having done that, it makes a tremendous problem as to how venturesome capital is still to be brought into this field of development.

Senator ROBINSON: Now let me ask you a question in that connection. You made that quite clear in your statement, to my mind, that the initiative of railroad construction in the United States was upon the part of more or less speculative investors. Do you think it was desirable that that condition should have continued indefinitely?

Mr. THOM: I do not think it was possible to continue it indefinitely, Senator.

Senator ROBINSON: And that the era of regulation was inevitable?

Mr. THOM: I think so.

Senator ROBINSON: Now you have said that the existing system of regulation has had for its main purpose the correction of abuses and the elimination of evils of railroad management.

Mr. THOM: Yes, sir.

Senator ROBINSON: That is the inevitable result of the conditions——

Mr. THOM: Of all these abuses which have arisen, yes, sir.

Senator ROBINSON: The system of regulation that now prevails is the product of a slow growth which has occurred in spite of the opposition of railroads, I believe you stated?

Mr. THOM: That is my judgment.

Senator ROBINSON: I think that is correct. Do you regard the Act to Regulate Commerce—that is, the act of 1887 that we have already mentioned— as largely a punitive, corrective measure, and not as a constructive measure?

Mr. THOM: Yes, sir. I think, Senator, that is not only so, but in obedience to the spirit of resentment throughout of the abuses which did exist, that has been demonstrated with

the idea of giving the very lowest possible rate and of surrounding the management of the railroads with the greatest possible restrictions. And that there has been a tremendous distrust on that part of a large portion of the public in the management of railroads. It has been considered necessary to surround them with bayonets, and in order to make them keep step, just prick them in the back and around. Of course, there can be no enduring system of that kind. The time must come when the character of the men in charge of these properties must be recognized as high as any other business, or the system of private ownership and private management must go. We say that time has come. We ask you gentlemen to examine whether or not the time has not now come when you can deal with this business as you do with any other business, on the assumption—on the recognition, I should say, rather than assumption—of the fact that railroad management in this country is, as a rule, honest and upright and patriotic. Now when that time does come—and I say it has come now—you gentlemen are considering whether it has come or not—when that time does come then we think that the time has come for you while retaining all of your corrective powers and processes, to add the constructive and helpful features to this system of regulation which will insure for the future the sufficiency of these facilities. And I want to say right there, if you will permit me one more remark—that granting all that can have been said about abuses existing in the past, the mere existence of these abuses, of looking at them and feeling resentment against them, detecting them and punishing them, will not provide for what the public needs in the future as to its facilities. If they were great enough upon their mere removal to put the railroads in a condition of furnishing all these facilities that are needed in the future, that would be one thing, but if you remove them all and still have an incapacitated system, why you have not done what the public needs require.

Now our proposition is, first, that the great mass of these

abuses have been removed; that if they exist at all it is only in sporadic cases, but certainly as to those that are not removed the retention of your corrective powers will be sufficient to deal with them, and when they are all removed there still are conditions of incapacity created which will prevent the railroads from being able to do their real function for the public.

Now we are asking you to see to it that when you, by the retention of your corrective machinery and processes, get rid of them all, you do not leave an anæmic and an incapacitated system of transportation, but that you will deal in a comprehensive and helpful way with the needs of the future.

Senator ROBINSON: You have referred frequently during your statement to the distrust in the public mind occasioned by the alleged mismanagement on the part of railway managers and financiers. Does that condition, in your opinion, still exist?

Mr. THOM: I do not think so. Do you mean the public mind?

Senator ROBINSON: In the public mind.

Mr. THOM: To nothing like the same extent that it did. I think the public mind has been greatly modified, that is the public judgment of this matter has been greatly modified, and they are looking today on the situation with different eyes.

Senator ROBINSON: You regard it as true, do you not, that that condition has been perpetuated by the policy of railroads themselves, first, in opposing all regulation, and second, in failing to acquiesce in the attempts of Congress to regulate property. For instance, after the passage of the act of 1887, the general policy of the railroads was to test every inch of ground of regulation contained in that act. was it not?

Mr. THOM: Yes, sir.

Senator ROBINSON: And that course has been pursued largely with regard to other subsequent acts of Congress enacted in the exercise of its power to regulate commerce?

Mr. THOM: That tended to keep the country divided into two views; one was the public insisting that those regulations should be made effective and the other side fighting it, and the result of that was necessarily to put the passionate views of the victorious party on the other side.

Senator ROBINSON: That condition, I believe you have correctly stated, has been modified, to say the least of it?

Mr. THOM: Yes, sir.

Senator ROBINSON: The railroads have changed their attitude entirely on the subject of regulation?

Mr. THOM: They have.

Senator ROBINSON: And in part as a result of that, as well as the other conditions, the public attitude toward the railroads has changed?

Mr. THOM: Yes, sir. We are getting into a better condition of affairs.

Senator ROBINSON: And if that diagnosis of the situation is an accurate one, and I think it is approximately so, it means a very gratifying condition. Now, the second general exercise by Congress of its power to regulate commerce, was, I believe, embraced in the so-called Sherman Anti-trust Act, was it not, of 1890?

Mr. THOM: Well, at the time that was passed, Senator, it was not supposed to apply to railroads.

Senator ROBINSON: I was going to ask you about that. As a matter of fact, that was the second comprehensive attempt on the part of Congress to exercise its regulatory power over commerce. Was that act generally regarded as applicable to railroads when it was passed?

Mr. THOM: No, sir, it was not.

Senator ROBINSON: What, in your opinion, are the public benefits resulting from the application of the Sherman anti-trust law to the railroads under the system of governmental regulation such as exists now?

Mr. THOM: I do not think that it has any benefit, Senator, for the reason that there are two points at which competition

may benefit the public. One is in respect of charges; the other is in respect of facilities. Now, of course, it cannot have any effect in respect of charges, because those charges are Government made for both lines. Now as to competition of facilities, I believe that the natural conditions of every management insure that just as much as if there was absolute competition all around. You cannot imagine the efforts that the management of a single system has to make to keep down the rivalry between the managers of various divisions of that property in order to make a good showing for themselves. That has been at times a serious difficulty of railroad management. Here is a man who wants to make a splendid record for his own division, and to get his trains over quickly and get them over cheaply, and rise up above the general mass as a successful railroad operator. Now at times he has done that to such an extent that he has not regarded the next division at all. He has sacrificed the through movement to the success of the management of his own division, and that comes from a very human impulse, for him to demonstrate his own efficiency and get the advantage of it.

Now, therefore, I think that that applies also to the management of two railroads commonly owned but doing a competitive business as to facilities and all that. Each one wants to make a record for himself, and therefore I do not believe that the public has been in much danger in respect to facilities; secondly, I feel that I can answer your question quite comprehensively, that when you regulate railroads you put them in a class where the anti-trust acts become of little value to the public, and that is certainly true when you recognize that your power of regulation would extend to the only possibly uncovered feature, and that is facilities.

Senator ROBINSON: Then, if I understand you correctly, in your opinion, the public interest would not suffer if the anti-trust acts were made inapplicable to railroads?

Mr. THOM: I don't think it would.

Senator ROBINSON: And railroad operations might be facilitated, is that your idea?

Mr. THOM: I think so. There are certainly some features of it where this happens, as I understand it. I, myself, went before the Judiciary Committee, or the subcommittee of the Judiciary of the House of Representatives when they had the Clayton Bill under consideration, and presented the question of the desirability of the law permitting the traffic managers of these various railroads to get together, and to discuss the terms on which commerce should move. That committee referred that question to the Interstate Commerce Commission in writing, and the Interstate Commerce Commission wrote a letter endorsing that view, and drew a provision, which was put in the Clayton Bill as it left the House of Representatives. When it got to the Senate, the Senate Committee on the Judiciary, of which I believe there is at least one gentleman here present, did not hold any hearings, and we could not make our presentment, and that went out so quick there that it made us dizzy, but we feel it went out without having the merits of it presented. The committee had a short time—they had to act very quickly—and they did not have any public hearings on that bill at all. But at any rate the point I am making is that the practical necessity of having these traffic managers meet and agree upon their joint rates and their through routes, and agree upon the terms upon which they will carry traffic on their roads, so as to make it harmonious with and not discriminatory against the rates on some other roads, is an essential of the railroad business, if equality is to be created, and the public interest can be safeguarded, if you permit the Interstate Commerce Commission—make a report to the Interstate Commerce Commission of whatever is done and enable them to set it aside.

Senator ROBINSON: I presume it is your thought that if the suggestions which you have made with regard to increasing the authority of the Interstate Commerce Commission over the control of rates is enacted into law, that there would still be less necessity for the application of the anti-trust law as to railroad operations?

Mr. THOM: Yes, sir. Now, Senator, just let me get this idea in there. When we recognize that rates, wherever they exist, may discriminate against other rates, no matter whether they are interstate or outside of the State, and that rates interstate may discriminate against the rates outside of the State, we have gotten to a point where there must be an independent authority to determine that question of discrimination. We cannot let one of the parties who is adversely affecting the interest of another party across the border determine the question of discrimination, because that is the power of discrimination instead of the judicial determination of the question. We cannot have a question of discrimination determined except by some impartial authority.

Senator ROBINSON: I want to ask you some questions a little later about the question of increasing—the proposition of increasing the authority of the Interstate Commerce Commission, touching the matter of rate-making, but now I want to go back just a moment to the subject of the impairment of credit and the restoration of it. You have said that the objectionable conditions which have existed in the management of some railroads in the past, have, in your opinion, practically been eliminated, I believe.

Mr. THOM: I think they have been almost entirely eliminated. The condition of public sentiment in the railroad world has been in the direction of such elimination.

Senator ROBINSON: In your judgment, did such disclosures as were connected with the New Haven Railroad, along about the time you say this impairment of credit began, have any emphatic influence in the impairment of credit?

Mr. THOM: I think it did have a most adverse effect, Senator, and I will tell you another thing it had. It had the effect of helping to create the public sentiment among the railroads themselves that such things as that must cease.

Senator ROBINSON: I agree with you. Now, I want to ask you further along that line, whether or not the practice has existed among many, or at least some railroads, of the

officers of the railroads organizing corporations, independent of the railroads themselves, of which they, the officers of the railroad corporation, became the principal stockholders, and of buying and selling through those subsidiary corporations the supplies which were purchased by the railroads. Has that condition existed?

MR. THOM: Has it existed?

SENATOR ROBINSON: Yes.

MR. THOM: I have heard of it and I believe it has.

SENATOR ROBINSON: Do you not think that tended to increase the distrust occasioned in the minds of railway investors, by other mismanagements in railroad affairs?

MR. THOM: I do, but I think this, Senator——

SENATOR ROBINSON: Do you think it would be possible to put railroad credits upon a secure basis, without in some way eliminating this practice, whereby, or through which railroad officers who, under every principle of law are trustees, are in the habit of buying and selling to themselves, through corporations that they have organized, and thus making enormous profits out of their trusts?

MR. THOM: Senator, the difficulty about our situation there is this: that did exist, but that has likewise been practically eliminated, and we are attempting—it takes a long time, you know, for law to catch up with an abuse.

SENATOR ROBINSON: That is true.

MR. THOM: I think that the law is about ten years behind that abuse.

SENATOR ROBINSON: You think that condition has been abolished for ten years?

MR. THOM: I think it has been abolished for a long time. I said ten years at random. I did not mean anything especially, except that it has been for some time abolished.

SENATOR ROBINSON: Take the case we had awhile ago of the New Haven Railroad.

MR. THOM: Those things—I do not know when they existed, and as I say I put the period at ten years simply as an illustration, but my belief is it is abolished. I talked

with the President in regard to section 10 of the Clayton Act. That was drawn in such a way as practically to break up the railroad systems of the country, and I told him, in asking his assistance in having that act suspended until Congress could think of it again—I told him that I was thoroughly in harmony with the soundness of the principle for which he stood, that a railroad officer in and dealing for the railroad, whether he be a director or other officer, should not be allowed to sit on both sides of the table, and some way should be found, if the public thought at all that that situation now continues, of preventing it, and that I, as far as my powers lie, would assist in suggesting a means of preventing it, and I hold myself open to that today. I believe that that is a thoroughly unjustifiable position for the trustee of a railroad—and an officer is a trustee, and a director is a trustee—to be dealing for his own benefit with the contracts of the railroads. And we, speaking of it now as a railroad fraternity question—we are all agreed on that subject.

Senator ROBINSON: And such practice could unquestionably startle cautious railway investors?

Mr. THOM: Undoubtedly.

Senator ROBINSON: For all investors are cautious?

Mr. THOM: Undoubtedly.

Senator ROBINSON: I agree with you.

Now, you have in the course of your statement referred to the Pennsylvania Railroad as a model system?

Mr. THOM: I did not know I had, but I will. I think it is.

Senator ROBINSON: You did, as I understood you, and I do not wish to be understood as implying any attack upon the Pennsylvania Railroad system, but as touching your statement made just a moment ago, that these objectionable practices on the part of railroad officers of profiting through the organization of associate corporations to sell supplies to the railroads of which they are officers, has been abolished, I want to ask you if you know anything about the

alleged printing company which does the printing for the Pennsylvania Railroad?

Mr. THOM: Not a thing. I never heard of it.

Senator ROBINSON: You do not know about that company, or whether it is still in existence and the salaries of—

Mr. THOM: No, I have not. I know this. Of course, I am conversant with the investigation that was made some years ago of profits that various officers of the Pennsylvania Railroad were alleged to have made out of contracts with the company, or out of commodities along its way, that were hauled by the company, but that is the full extent. I have never heard of the printing part of it to which you refer.

Senator ROBINSON: It is still in existence, and I will not ask you any further questions concerning that, as you say you know nothing about it. Now, you also referred, and I think very aptly, to the pernicious influence of politics in the matter of the regulation of railroads, and you made the statement that the railroads themselves were not in politics, and no railroad you knew of had been in politics.

Mr. THOM: No, I did not say that.

Senator ROBINSON: Did you not?

Mr. THOM: No; I said no railroad with which I am acquainted is in politics. I did not say I did not know of any one having been in politics.

Senator ROBINSON: Well, I misunderstood you then.

Mr. THOM: Oh, no.

Senator ROBINSON: I accept as an abbreviation of this examination in that particular your statement now.

Mr. THOM: Senator, let me tell you one thing before you get me away from that. I know railroads which are in politics, some more than others, but I have, since I had any responsibility as a general officer—have stood for, with the entire sympathy of the managers—the chief managers of the companies with which I am particularly connected—have stood for the elimination of that, and their face has been set against it. You cannot imagine, when a railroad

company has been in politics, the difficulty of getting out. Men in the highest position will come and insist on co-operation in political matters, and you have the greatest difficulty. Sometimes you have to accept a great disaster as the penalty for getting out, but railroads have accepted that, speaking generally, in this country. Now, I do not know—there may be still some in politics to a limited degree.

Senator ROBINSON: I referred in my examination of you to this subject, solely because of your mentioning it in your argument. I agree with you that in so far as it is possible to eliminate politics from any human affairs, that politics ought to be eliminated from the regulation of railroads, and I think you agree with me that the railroads, if that is done, ought to go out of politics, or perhaps they may have been partially responsible for some of the political influences that have been exerted concerning them by reason of their activities in politics. Take, for instance, the case of the Louisville & Nashville. I suppose you are familiar with the investigation that has recently proceeded before the Interstate Commerce Commission?

Mr. THOM: In a general way, yes.

Senator ROBINSON: I do not care to go into the subject in detail, further than to say it illustrates the embarrassments that accrue to a railroad management, after it once enters politics, by reason of the importunities of politicians, and that investigation indicated that the Louisville & Nashville, and other railroads operating in that section of the Union were, up until quite recently, as late as 1913, and perhaps 1914, very actively engaged in politics. I suppose you are familiar with the case of two southern railway presidents—I do not mean presidents of the Southern Railway, but two presidents of railroads in the South, who held a conference, and who, in numerous correspondence subsequently styled each other as Pizarro and Cortez, and discussed how they should divide the new world?

Mr. THOM: That was very humorous. I have seen it,

but that was many years ago, almost as long ago as the time when Cortez and Pizarro did exist.

Senator ROBINSON: It is long since you were connected with the Southern Railroad. It was in the year 1906.

Mr. THOM: That was some years ago; well, that is a long time ago.

Senator ROBINSON: Yes, but I do not think you can refer to that as ancient history in view of the fact that the railroad which was represented by one of those presidents is shown in the investigation of the L. & N. by the Interstate Commerce Commission to have contributed enormous sums to political campaigns in 1913. I do not think you can say this is purely a matter of ancient history. I make no point of that except to emphasize the fact that the fault is, so far as the political activities touching—so far as political activity is concerned, is not all upon the part of the politicians; that the railroads may have invited or promoted the condition by their activities in politics.

Mr. THOM: You must have misunderstood me if you thought I contended to the contrary. It is a system which is indefensible. It acted in this way: Here is a railroad in politics that all the time was behind one set of men and all the time opposed to another set of men, and after a while the other set of men won and then they came in there with their tomahawks out, you know, and with all their paint and feathers and determined to destroy the thing that had been after them all these years, and there is the illustration of the spirit with which the railroads have been dealt with, because many of the men who have dealt with them have dealt with them with their wounds fresh from the attacks the railroads made on them. Now I do not mean to say, let me make this clear, I do not mean to say that the railroad movement out of politics will appeal to every company at the present day and to the same extent. You know very well that you might find some radicals even in the Senate. We meet some radicals even in the railroad life.

We meet people in the railroad world that we cannot approve, because they take an entirely different view of the politics which ought to be adopted from those that we take; and therefore you find that when a tendency starts it will appeal to men of different temperaments and different views of public policy at different times, but what has happened is that the men who were most persistent in holding on to that have become early exceptions or belated adherents of this view of getting out of politics. But some of them are belated. At the same time the public sentiment of the railroad world is against being in politics, and the practice of the railroad world, dealing comprehensively, possibly with some exceptions of belated gentlemen, is to be out of politics.

Senator ROBINSON: I think we agree that in any event politics ought to be taken out of the railroads and the railroads out of politics as far as can be done?

Mr. THOM: We agree on that, but we will say this, that for the railroads to be incapacitated to take any position in politics—it is a most lamentable thing for the public if they are to be hacked to pieces by the other side which is all the time in politics, and trying to get into public office by abusing them.

Senator ROBINSON: You have contrasted the regulation of national banks with the regulation of railroads and pointed out very accurately that railroads did not begin with regulation, whereas the national banks did. Here is another contrast that I think we may agree upon between the regulation of national banks and railroads: The Government control of national banks is very much more rigid than it is of railroads, is it not?

Mr. THOM: I really have not those features in mind.

Senator ROBINSON: If you have not I do not care to heckle you about it.

Mr. THOM: I say my impression was there was a liability on the national banks that, as I understood it, railroads do

not possess. What I mean is of their having the perfect power of initiative, or a much larger power of initiative.

Senator ROBINSON: In so far as regulation is concerned, though now, the Government power, as exercised, is much more rigid as to the banks than it is as touching the railroads, is it not?

Mr. THOM: I do not so understand it. You may be right.

Senator ROBINSON: Is there not another distinction in the organization and operation of these classes of corporations—in the national banks the officers and managing agents usually are the principal stockholders of the banks themselves, are they not, whereas is that true under the present system of railroad management?

Mr. THOM: I do not think it is true of either.

Senator ROBINSON: Do you not?

Mr. THOM: No, the rates of the national banks are not subject to such regulation as the rates of railroads.

Senator ROBINSON: I do not think you understood my last question.

Mr. THOM: I was answering your former one.

Senator ROBINSON: But there is an absolute maximum limit fixed by law nearly everywhere touching the interest that shall be charged, but I was not speaking of that now. In the national banks the officers of the banks and the managing agents, the men who control the policy of the bank are the men who own the bank largely, are they not?

Mr. THOM: I think that very frequently is the case.

Senator ROBINSON: That is not true as to railroads, is it?

Mr. THOM: No, sir.

Senator ROBINSON: By way of illustration, how much stock, do you know—I do not mean to pry into private business and if you have any objection to answering my question, you need not do so—but just by way of illustration, how much stock has Mr. Fairfax Harrison in the Southern Railroad?

Mr. THOM: I have no idea. The necessity, however, for

selecting railroad managers without reference to their stock ownership comes from the necessity of putting the very best man in charge of these properties, and I do not believe, since the difficulties which you alluded to a moment ago of these private arrangements of profit have disappeared, I do not believe the railroads suffer from that. Ordinarily now it is one of the most magnificent instances of our American system to observe the way men in railroad life have come up from the lowest beginnings. I have in my mind one man who is now comptroller of one of the large railroad systems and is considered perhaps the most eminent accountant in this country, who never went to school after he was twelve years of age, and commenced as a messenger boy in a Virginia station. I know of a vice-president and general manager who has come up all the way from the lowest grades of railroad service, and these men have come into these high positions because of special personal ability they exhibited through long years of service.

Senator ROBINSON: While all that is true, and I agree with you and rejoice in it, as a fact, it is also true that this management loses something that is usually associated with ownership and actual monetary interest in the control of large business concerns, does it not?

Mr. THOM: The public does not lose. Let me give you an illustration of what I mean.

Senator ROBINSON: I just asked you this question, do you think—

Mr. THOM: I know, but this is a valuable illustration I wish to present. I was present at a stockholders' meeting a short time ago of a southern railroad company whose president was the man of whom you asked how much stock he owned. It has been since the fall of 1914 since there has been any dividend on preferred stock of the Southern Road. The Southern Road has adopted the policy of having mass meetings of stockholders so as to have criticisms of the management, and when we went into this meeting the other day, last October,

there got to be a very considerable pressure for dividends, and a gentleman, who was a preacher, got up and demanded dividends, and he said: "This management does not consider the stockholders enough. The first duty of a management is to its stockholders." The president of the company said: "It must be recognized that the first duty of the management is to the public, and that the duty to the stockholders comes after that." Now in that matter of consideration for the public as the first duty, the management of the railroad loses nothing by not being very heavily interested in the stock.

Senator ROBINSON: Do you know anything about the Railway Investors' League, Mr. Thom?

Mr. THOM: No, sir; I do not.

Senator ROBINSON: I observed an advertisement in the New York *American*, the date does not appear in the advertisement, of some gentlemen who style themselves the "Railway Investors' League." It is signed by Mr. John Muir, of New York City, as Chairman, and a number of other gentlemen, complaining, it seems, that the interest of investors in railway securities is not being safeguarded in this hearing.

Mr. THOM: In this hearing?

Senator ROBINSON: Yes, sir. Some reference is made to a letter sent out by the Chairman, indicating some of the matters which the commission would consider and some of the classes of persons from whom the commission would like to hear, and complaint is made that railway investors were not specifically mentioned in that letter. I will hand this to you and then I think it would be fair to let it go into the record, and I will ask you to just glance over it. Before you examine that, your discussion here has largely been based upon the safeguarding, the fair safeguarding of the interests of investors in railway securities as a means of strengthening railway credit and thus obtain adequate and necessary railway facilities.

Mr. THOM: Yes, sir.

Senator ROBINSON: Do you know of any conflict between the rights and interests which you have presented here and the rights and interests of railway investors?

Mr. THOM: None at all. I have attempted to show, just as you have stated, that the public needs, in its own interest, an adequate railroad credit, and that the only way to protect the public is to do the things that legitimately attract investors. Now, as to this newspaper advertisement, to which you have called my attention, I know nothing of it or any of the people. I have heard Mr. Muir's name mentioned; I do not know him. I never heard of this advertisement, and I never heard of this move.

Senator ROBINSON: I know Mr. Muir. He is a very prominent citizen.

Mr. THOM: Any man has a right to complain of anything in this country, and I suppose Mr. Muir is simply exercising that prerogative.

Senator ROBINSON: I will state that I have read the advertisement, and my construction of it is that it is simply an invitation or a request to railway investors to effect an organization for the purpose of presenting their views and interests to this joint sub-committee, and of escaping what they may regard as unwise and unfair legislation affecting their interests, resulting from the investigation.

Mr. THOM: If that is the purpose of it, I suppose that is legitimate, for anybody to come here and present his views.

Senator ROBINSON: I do not mean to question the legitimacy of it.

Mr. THOM: What is that?

Senator ROBINSON: I do not think you can infer from anything I said that I was questioning the legitimacy of it.

Mr. THOM: No. I have not read the advertisement, and I do not know what it is.

Senator ROBINSON: My interest in the matter is to see that all parties in interest are fairly treated, and I called it to

your attention, thinking perhaps that you would be able to throw some light upon it.

Mr. THOM: No, I am not.

Senator ROBINSON: You know nothing about it?

Mr. THOM: No, I know nothing about it.

The CHAIRMAN: Mr. Robinson, would you permit me, in connection with that advertisement, to insert right here in the record the invitation which was sent out?

Senator ROBINSON: Yes.

The CHAIRMAN: I will just read one sentence from that invitation.

Senator ROBINSON: I will state that I think the invitation embraces the class whose interests are alleged to be involved in that advertisement, and I will be glad to have you do so, Mr. Chairman.

The CHAIRMAN: I will state, in the first place, that the committee will, of course, welcome the representatives of any organization of investors who wish to appear before it; and the purpose of the invitation was to cover such organizations, if they existed. I did not know that any existed. Now, the purpose of the committee is stated in this sentence:

“The purpose of the committee is to hear regarding Government regulation and Government ownership the opinions of economists and publicists of eminence, representatives of the Interstate Commerce Commission, the National Association of State Railroad Commissioners, State railroad and public utility commissions, representatives of the railroad executives and labor organizations, representatives of farming organizations, and farmers, shippers, and bankers, representatives of chambers of commerce, and other important business and industrial organizations.”

I put in the term “bankers” there, supposing that, as a rule, the investment bankers might be regarded as representatives of the investors. We all know that there are numerous investment bankers in the country, upon whose advice customers make investments. I saw that advertise-

ment, and if I had seen it before the invitation was sent out, I should have included that organization in the invitation.

Mr. ADAMSON: And they are now invited.

The CHAIRMAN: Yes, they are now invited. Insert this invitation in the record, with the advertisement referred to.

(Invitation of Committee omitted from this print.)

(The newspaper advertisement, above referred to, appears in full below, as follows:)

NEWLANDS JOINT CONGRESSIONAL COMMITTEE.

An Open Letter to All Investors in American Railway Securities.

Do you, the real owners of America's railroads, wish to be ignored by the Newlands Joint Congressional Committee's investigation, which began yesterday, and will continue probably for many months?

Or do you want to have your interests properly presented by spokesmen chosen by you and authorized to speak for you with a view to securing fair play for your invested savings?

Every conceivable interest will be represented at the committee's hearing—except the real owners of our railroads, you and us and the rest of the 600,000 investors who, by means of our savings, have provided the capital for the creation and development of our \$20,000,000,000 transportation system.

There is no one authorized to go before the Congressional Committee and present your united views.

The truth is that the small and moderate investors who have supplied the bulk of our railroad capital are the only body or class identified with the railroads who will not be very much to the fore throughout this investigation, so vital to the future of every railroad stockholder and bondholder in the land.

Read carefully the following list of interests Senator New-

lands, the chairman, declares the committee desires to hear from:

“The purpose of the committee is to hear, regarding Government regulation and Government ownership, the opinions of economists and publicists of eminence, representative of the Interstate Commerce Commission, the National Association of State Railroad Commissioners, State railroad and public utility commissions, representative of the railroad executives and labor organizations, representatives of farming organizations, and farmers, shippers, and bankers, representatives of chambers of commerce, and other important business and industrial organizations.”

Not one word, you will note, about the great army of frugal citizens whose hard-won savings have brought the railroads into being and keep them running. Railroad regulators galore are cordially invited. So, too, are the labor unions, the shippers, farmers. “Important business and industrial organizations” are likewise bidden to the deliberations.

But railway investors are wholly without any “important organization” to champion their rights.

This ought not to be.

Are you content to stand idly and impotently by and let everybody and anybody else say what should be done with your properties?

Don't you feel that your wishes, your views, your interests should cut some figure in the momentous proceedings—proceedings which are to determine whether the time has come to have the Government become owners of our 250,000 miles of railway or whether some other method be adopted hereafter in handling the whole railroad situation?

Surely to ask the question is to answer it.

If you agree with this, if you wish to have a voice in shaping the future and the fate of your properties, you can insure the proper presentation of your wishes by joining the movement to organize a Railway Investors' League and,

later on, by nominating and authorizing the strongest delegates possible to go before the committee to defend your legitimate rights.

Railway Investors' League.

The Railway Investors' League has already tentatively enrolled several thousand members from all the States of the Union, and a start has been made in inducing the leading railroad companies to bring the movement directly before each one of their recorded stockholders.

If the response to this announcement—and to the other measures being taken by those who are striving to bring together railway investors in a united, influential, nation-wide body—shows unmistakably that you wish to have some voice in the fate of your properties, steps will be promptly taken to proceed with the formal and permanent organization of the Railway Investors' League.

Such an association must, of course, be self-supporting, and it is proposed to fix the annual dues at one dollar.

Do not forward any money at this stage, but simply fill in the appended blank form and mail it at once—without committing yourself to any obligation or to any responsibility whatsoever.

If you do not consider your own rights worth protecting, it is scarcely to be expected that any one else will.

J. A. Fagan, Minneapolis, Minn.

Carl W. Peirce, Massillon, O.

F. Edward Sommers, St. Louis, Mo.

William K. Ewing, San Antonio, Texas.

H. T. Winston, Washington, D. C.

C. McConnell, M. D., Hogansburg, N. Y.

Organization Committee.

John Muir, New York City, Chairman.

Lionel Sutro, New York City, Vice-Chairman.

B. C. Forbes, New York City, Vice-Chairman.

Paul Mack Whelan, New York City, Secretary.

(The foregoing advertisement appeared in the "*New York American*" of date Tuesday, November 21, 1916.)

Senator ROBINSON: It may be that some of the questions I am asking you are more or less academic, but they are not asked for the purpose of haggling in any wise, but solely for the purpose of clarifying my own mind with respect to the matters which you have suggested. You suggested certain reforms as fairly calculated to accomplish the ends which you think are desirable in railway regulation.

Mr. THOM: And which are making much progress in that direction.

Senator ROBINSON: The first relates to the national regulation of all rates for roads engaged in interstate commerce. I understand that you expect hereafter to discuss the law applicable to these suggestions, and I will not go into that now, or anticipate your discussion by questions in detail concerning the power of Congress to occupy the entire field of rate-making as to railroads engaged in interstate commerce; but in order that I may understand now your viewpoint as to this proposal, I ask do you contend that if a railroad engaged in interstate commerce, the rates which it charges on purely intrastate traffic are within the regulative power of Congress?

Mr. THOM: Yes, sir.

Senator ROBINSON: Is it not true that Federal control over interstate rates is limited to two conditions, so far as our courts have yet decided: first, the nullification of rates which are confiscatory, and second, the nullification of rates which constitute a discrimination against or a burden upon interstate commerce?

Mr. THOM: I think the courts have gone further, and have said that it is the constitutional power of Congress to regulate the entire instrument of interstate commerce.

Senator ROBINSON: Has the Federal Government power, in your opinion, to fix or regulate rates on purely intrastate traffic, merely because the commodities are transported over

a railroad which, while doing intrastate business, is also engaged in interstate business?

Mr. THOM: I think that the foundation of the power of Congress to act in the matter is to regulate the instrumentality of interstate commerce in all its bearings.

Senator ROBINSON: Do you not think that is limited to its connection with interstate commerce; that it regulates it as an agent of interstate commerce, and not as an agent of intrastate commerce?

Mr. THOM: You cannot regulate it; you cannot protect it; you cannot sustain it unless you regulate it in all its activities.

Senator ROBINSON: Then, I understood you correctly in your original statement. I wanted to make sure of it.

Mr. THOM: Yes. I will present an argument on that subject at a later stage of these proceedings.

Senator ROBINSON: With reference to the suggestion which you make as to compulsory Federal incorporation of railways before permitting them to engage in interstate commerce, this, in your opinion, would relieve the unequal conditions under which the railroads are organized and operated, by reason of the limitations and provisions of their State charters, but it would not add anything, of course, to the regulative power of Congress?

Mr. THOM: No.

Senator ROBINSON: Congress can do everything without Federal incorporation that it could do with it?

Mr. THOM: I think it can, but, as I told you, there is some difference of opinion about that, in respect to any provision of a congressional act which might be construed as an amendment to a State charter.

Senator ROBINSON: It would, in your opinion, constitute a tendency toward uniformity, which would strengthen railroad credit?

Mr. THOM: Undoubtedly, and it would have a most important bearing upon universally accepted control as valid by Congress, of the issue of securities.

Senator ROBINSON: Your third suggestion relates to reorganization of the Interstate Commerce Commission and changes in its jurisdiction and powers, so that it shall become a judicial tribunal?

Mr. THOM: Yes, sir, largely.

Senator ROBINSON: And that regional subordinate commissions be established, with right of appeal to the central commission provided in certain cases?

Mr. THOM: Yes, on exceptions.

Senator ROBINSON: How many of those regional commissions do you think would be required, Mr. Thom?

Mr. THOM: I have not gone over the country about that. I do not know.

Senator ROBINSON: Very well; if you have not determined upon the number——

Mr. THOM: No. I thought that was a matter that the Interstate Commerce Commission would study and recommend to Congress.

Senator ROBINSON: Now, if these regional commissions are created, as you suggest, would it still be necessary for them to have examiners, in order to make a proper investigation of cases coming before them?

Mr. THOM: I should hope not; but I cannot tell.

Senator ROBINSON: The primary purpose of creating regional commissions, as I understand you, is to bring the work—the investigation itself—closer to the Commission, so that the litigants may have the advantage of the actual service of the Commissioners themselves, rather than of subordinates in the person of examiners and clerks?

Mr. THOM: Yes. The double object of bringing the Government close to the communities, whose interests are affected, and the other object is that of assuring the character of the men—the type of the men, I would say, rather than the character—the type of the men who are to have charge of these important matters.

Senator ROBINSON: You would not advocate the creation

of these regional commissions unless they were so constituted and equipped as to accomplish these two things?

Mr. THOM: That is right, yes.

Senator ROBINSON: To bring the public closer to the Commission and the Commission closer to their work?

Mr. THOM: Yes, and that the type of men be assured. There is great complaint—somebody made it here this morning—I think, Judge Adamson—a great complaint, not only on the part of the shipping public, but on the part of the railroads, that in many important matters they do not get beyond the Examiner; and while these Examiners are fine young men and capable people in a great many ways, they are bound to have their grade somewhat fixed by the compensation they get.

Senator ROBINSON: With the constantly increasing work that is being imposed by Congress on the Commission, and the natural growth of their duties, with the expansion of the commerce of the country, this condition will grow worse?

Mr. THOM: Yes, undoubtedly so.

Senator ROBINSON: Now, just an inquiry or two about the increase of the power of the Interstate Commerce Commission over rates, which constitutes another one of your suggestions. Do you suggest that this power be extended in any particular, so as to give the Commission the power to fix minimum rates?

Mr. THOM: That, in my representative capacity, is the full extent to which I would make the recommendation. I mean that I am expressing the views of the railroad executives, in making that recommendation.

Senator ROBINSON: Yes. You do not wish to express any personal views concerning it?

Mr. THOM: I do not think it would be very becoming for me to express a personal view.

Senator ROBINSON: I will not ask you to do it.

Mr. THOM: I want to say that my personal view goes to the full extent that I have recommended there, however.

Senator ROBINSON: Would the power to fix both minimum and maximum rates, if vested in the Commission, prevent discriminations?

Mr. THOM: I think it would.

Senator ROBINSON: That is the principal object of giving that power to the Commission?

Mr. THOM: That is one object, but the other object—and a very important one—is to prevent the improper depletion of the revenues of the companies through some local conception of what is best to be done for the company.

Senator ROBINSON: And to prevent the railroads themselves, under stress of competition, from making unfairly low rates?

Mr. THOM: Yes.

Senator ROBINSON: Would not the difficulty of determining the relative reasonableness of rates still exist after the power to fix a minimum rate is given to the Commission and the rate actually fixed? Would not there still exist a latitude between the minimum and the maximum that would enable the railroads to practice discrimination?

Mr. THOM: I think you will find in the suggestion that they be given entire power over the question of discrimination.

Senator ROBINSON: Very well.

Mr. THOM: And the protection of the rate structure.

Senator ROBINSON: Referring to your fifth suggestion, which would prescribe some of the things that the Interstate Commerce Commission must take into consideration in fixing rates, you say that they should be required to consider the value of the service. Do they not do that now?

Mr. THOM: I do not know, Senator, whether they do it or not. I have a good deal to say when the proper time arrives on that question of value of service, and if you have time now for about half an hour I would like to do it at this time.

Senator ROBINSON: You need not do it now. I prefer

that you should do it in your own time, although I should be very glad to hear your discussion of that subject. What do you mean by the suggestion that the Commission should be required to consider the rights of the passengers, shippers and owners of the property transported as an element in rate-making?

Mr. THOM: What do I mean by that?

Senator ROBINSON: Yes.

Mr. THOM: I mean you would have to have reference to the public's side of the question as well as to the side of the corporation that furnishes the service.

Senator ROBINSON: The Commission now has regard to the expenses of the railroad in maintaining and operating its property, does it not?

Mr. THOM: Not always.

Senator ROBINSON: Well, should it always do it?

Mr. THOM: I think it ought always to do it.

Senator ROBINSON: Do you think the law should require them to do that without regard to the economic extravagant maintenance of its properties?

Mr. THOM: No, sir; I do not. But now I will take the illustration that is in my mind that caused that provision. Everybody knows that the railroads, when they have paid wages and increased prices, have not done it as a means of extravagance; they have done it under the compulsion or force that they felt they must recognize. The Interstate Commerce Commission has said in a case that they cannot consider an increase in wages if not justified as an element in the expense.

Now, what does it mean by that? You gentlemen know something of the way wages are demanded. We think the Interstate Commerce Commission ought to know that, and when we find that situation we feel that it ought to be taken into consideration in determining rates.

Senator ROBINSON: That seems fair, but I did not infer from your statement of that matter that it would embrace

this item. I thought if you had anything embraced there other than road improvements and things of that sort you would have specifically mentioned it. There ought to be some limitation on that provision, however. The Commission ought not to be required to make rates always remunerative to railroads without regard to the manner in which the railroads had expended their funds.

Mr. THOM: Oh, no, certainly not. In other words, there must be some supervision over the matter of expenses.

Senator ROBINSON: Yes.

Mr. THOM: I assume that when Congress says expenses it means legitimate expenses. It does not mean wastefulness or throwing away?

Senator ROBINSON: Yes; reasonable and necessary expenses.

Mr. THOM: Certainly. There must be that margin to the managers as to what they consider necessary, and the Government must not prescribe an arbitrary rule, for it cannot be done. But there might come up a case theoretically. However, I do not think you will find it.

Senator ROBINSON: From your statement I infer that you are merely expressing the suggestion in general terms, that you were not trying to write it as it should be written into law.

Mr. THOM: Yes, sir.

Senator ROBINSON: I did not understand exactly what you meant by it. Your suggestions with reference to giving the Interstate Commerce Commission power to revise railway-mail pay would undoubtedly relieve Congress. Mr. Underwood suggests that that is already the law.

Mr. THOM: Well, it is measurably the law. Maybe it will be able to do it a little more effectively.

Senator ROBINSON: You would like a modification of the law in that particular, would you?

Mr. THOM: Yes, sir. The truth of the matter is that I am not acquainted with what the law has done. Somebody

appointed me on a committee of counsel the other day to appear before the Interstate Commerce Commission on the subject, and I noticed my name at the head of a brief which I never saw, and I found that I was in rather deep water.

Senator UNDERWOOD: As I understand it, the last Post-Office Appropriation Bill took the control of the fixing of the railway pay out of the hands of Congress and authorized the Interstate Commerce Commission to determine what it should be.

Senator ROBINSON: I think that is what you want in that suggestion, and I think it is a fair suggestion. I was just going to remark that. Your suggestion as to Government control of the issuance of stocks and bonds of the railroads engaged in interstate commerce is undoubtedly in conformity with the opinion of growing public thought on the subject, and more than any other one thing would tend to strengthen railroad credit and protect it for the future.

Mr. THOM: I want to call your attention right there, Senator, to the fact that that proposition on our part is proof that we desire to get a provision of the law which would prevent the recurrence of the things that the public complain of. In other words, to talk about the doing of these other things does not involve the suggestion on our part that the Government should not keep its eye on the possibility of abuses for the future. We want the machinery to provide for that as well as for the other things. We are trying to take a broad and comprehensive and patriotic view of what the Government ought to do in this matter of regulation.

Senator ROBINSON: That concludes my examination of Mr. Thom. In your statement you submit concrete propositions for reforms which you think are necessary in the public interest and to protect the rights of the railroads and railroad investors, and you have performed the service, which I appreciate.

Mr. THOM: I thank you, Senator.

The CHAIRMAN: Mr. Sims, will you proceed?

Mr. SIMS: Mr. Thom, I do not want you to assume or conclude that I am unduly inquisitive, or in an unfriendly attitude because of the questions I am going to ask. When we get through with this hearing, I want to, as far as I can, know who is bound by it or who is estopped by it, and that sort of thing. Now, you appear as attorney here for a committee, as I understand it.

Mr. THOM: Yes, sir.

Mr. SIMS: The Advisory Committee of Railway Executives?

Mr. THOM: Yes, sir.

Mr. SIMS: Now, you may have stated it, and if you have I do not remember, what railroad executives is this committee advising, what systems do they represent, what per cent of the railroad property of the country do they represent?

Mr. THOM: I should suppose it is between 85 and 90 per cent now.

Mr. SIMS: In other words, you have the companies by name so that they can be put in the hearings, that you, in this way, represent?

Mr. THOM: Oh, yes.

Mr. SIMS: And this 85 per cent of the railway interests——

Mr. THOM: I think it is over 85 per cent now.

Mr. SIMS: Well, whatever it may be, that you are representing them, and what you represent as their wishes will be acquiesced in by them?

Mr. THOM: That is my understanding.

Mr. SIMS: Now, then, there is about 15 per cent then of the railway interests of the country that have not indicated their willingness to be bound by your recommendation?

Mr. THOM: There are some small ones, mostly, of course not altogether. There are some, mostly small lines.

Mr. FAULKNER: Short lines.

Mr. THOM: And I have no doubt in the world that a

great many of them do not dissent in any way. We happen to have the specific authority of a great many.

Mr. SIMS: Well, are they, in general, lines that are in the nature of subsidiary lines, owned by other roads?

Mr. THOM: No, sir; I do not know what they are. As a rule, of course some of them are, but not all.

Mr. SIMS: You are representing the public here, as I myself am, and you are asking us to take that view, that is the view that this whole proceeding shall be in the public interest?

Mr. THOM: Yes, sir.

Mr. SIMS: Pressing nothing that the public interest does not demand or require or will not be benefited by receiving. Of course this fifteen per cent is part of the public—the small—roads, and I suppose there are a greater number of small corporations than large ones. In your testimony here you referred to the fact that your recollection was that in what we call the Pennsylvania Railroad System it embraces 149 separate corporations.

Mr. THOM: That is my recollection; I do not remember exactly.

Mr. SIMS: Well, that is about accurate. And that 149 corporations that constitute the present Pennsylvania Railroad System, as a matter of course, are parties to this investigation.

Mr. THOM: I should say so.

Mr. SIMS: And you are representing their views the same as you do the Southern and all others—I mean they are represented by yourself, and you being counsel——

Mr. THOM: Well, I do not want to be in the position of saying that I recommend anything specific. If it is necessary at any time I will put in the record the names of the roads I represent.

Mr. SIMS: I think that would be a good idea from the fact that some roads may afterwards say they did not know

they were being represented, or something of that kind—that is, the stockholders in some roads.

Mr. THOM: I can put a list of those into the record.

Mr. SIMS: You are acting in the capacity of attorney to an advisory committee?

Mr. THOM: Yes, sir.

Mr. SIMS: I suppose that means only in reference to this examination.

Mr. THOM: Well, it does not mean only in reference to that, so far as my present appearance is concerned. It is confined to what might pass here. But my authority is a larger one than this mere hearing.

Mr. SIMS: Well, this committee of executives, are they chiefly railroad presidents?

Mr. THOM: They are either railroad presidents or they are chairmen of the boards of railroads. Judge Lovett is Chairman of the Board of the Union Pacific, and Mr. Walters is Chairman of the Board of the Atlantic Coast Line and the Louisville & Nashville. They are both members of this Committee of Executives.

Mr. SIMS: Now, this committee that you do represent, are they the owners of the railroad properties with which they are officially connected?

Mr. THOM: I assume that the stockholders own the roads, and of course they do not own individually a majority of the stock, I imagine, although I am not acquainted with their ownership.

Mr. SIMS: Do you know whether they are representing the owners of railroads—that is, the stockholders and bond holders?

Mr. THOM: They represent the railroads. They are acting in their official capacity as the heads of those systems.

Mr. SIMS: I do not understand that an operative officer of a railroad has a right to bind stockholders as to financial matters or policies or anything of that kind?

Mr. THOM: I think it would be safe to assume for these

railroad presidents and others that they feel they have the authority or the capacity to represent all the interests. At least, whether they have or not, that is the extent of my authorization that comes from them.

Mr. SIMS: It is a fact, or has been, I supposed, to some extent, that the office of president of a railroad company was more in the nature of being a general manager than otherwise?

Mr. THOM: I do not so understand it.

Mr. SIMS: When one railroad company is financially owned by another railroad company the president of the first railroad company may not be the representative of the financial interest in the second company.

Mr. THOM: Oh, that is quite true, but when you look over the names of these gentlemen I think you will find that they are responsible representatives of the railroads.

Mr. SIMS: Not having the means of knowing, or not knowing, that is what I am trying to do.

Mr. THOM: I will give them for the record.

Mr. SIMS: I mean the Advisory Committee, that is what you have reference to?

Mr. THOM: Yes, sir.

Mr. SIMS: I am speaking of the others. Now, take the Louisville & Nashville Railroad Company. It owns a large controlling interest in the Nashville & Chattanooga Railroad Company. Therefore, the president of the Nashville & Chattanooga Railroad Company is representative, to a great extent, of the Louisville & Nashville Railroad Company's interest in that company, rather than the general stockholders.

Mr. THOM: Yes, but the man who is on this Committee is Mr. Walters, who is the Chairman of the Board of the Louisville & Nashville.

Mr. SIMS: And does he not get that position by reason of the Louisville & Nashville, the majority of its stock being owned by the Atlantic Coast Line?

Mr. THOM: Yes, sir.

Mr. SIMS: The Atlantic Coast Line is the holder directly of the stock of the Louisville & Nashville Railroad Company?

Mr. THOM: It holds a majority of the stock, as I understand it; I do not know how much, but I understand a majority of the stock of the Louisville & Nashville. Then the Louisville & Nashville has stock control of the Louisville, Nashville & St. Louis, and in that way Mr. Walters has become representative of both interests.

Mr. SIMS: In other words, the railway company that he represents, being the controlling company, he therefore represents the company which can, and does in fact, control the policy of these other railroads?

Mr. THOM: That is my understanding.

Mr. SIMS: I wanted to get that, because I think it is something that it is well to have known. The propositions you present are from 85 per cent of the railroad interests of the country?

Mr. THOM: I think, when you get to talking about 85 or 90 per cent, it is nearer 90.

Mr. SIMS: Let it be one hundred, then.

Mr. THOM: I merely want to state what that means. That means a railroad, or railroads, in the class into which the railroads are divided by the Interstate Commerce Commission, having as much as a million dollars gross income a year. Of course, there are a great many shorter roads outside of that.

Mr. SIMS: Who do not earn that much?

Mr. THOM: Yes, sir; and one gentleman representing a large number of short roads, on the Pacific coast, came into my office yesterday, and stated he wanted to appear, and I have no doubt you will have representatives of these short roads. I am representing the roads in the class I have mentioned.

Mr. SIMS: Which is practically the railroad interests of the entire nation?

Mr. THOM: I think so.

Mr. SIMS: That is the way I understood you.

Mr. THOM: There are some interests—there is a very large percentage—that have conferred about this matter, and have argued with each other about it, and have come to the conclusions which have been placed before you.

Mr. SIMS: By yourself?

Mr. THOM: Yes, sir.

Mr. SIMS: And those conclusions are propositions for legislation and changes in the existing conditions, which are so general and so radical, as compared with the existing conditions, as to practically be an entire new situation or new legislative consideration of the entire subject-matter of the railroad interests of the country, its credit, its capacity to serve the public and all those things considered; in other words, the legislation you have asked for is so different from existing conditions as to amount to what you might say is a new codification and revision of all existing railroad laws and of the powers of the States, as they are now exercised, together with existing national legislation? So, if I see it correctly, it becomes practically fundamental regarding all transportation questions. Is that not substantially so?

Mr. THOM: It does not involve—it is easily engrafted as an amendment upon the present interstate commerce Act, but the changes that are made in it have many fundamental qualities. There is much in it that is a real change from present conditions.

Mr. SIMS: That, if carried out, would be practically a new interstate commerce law?

Mr. THOM: Well,—

Mr. SIMS (continuing): Rather than an amendment of the existing law?

Mr. THOM: Well, the difference between us on that would be simply a difference of terms. We both know it can be carried out by an amendment to the present law, and we both know that the changes that would be made in it are

far-reaching, and anything further than that would be just a difference in terms.

Mr. SIMS: Now, Mr. Thom, in hearing your entire discussion, which I did, except one day—and I have read that since—it is your belief, or the belief of those you represent, that unless there are changes in the existing law, along the subject dealing with the subjects which you have outlined, that the present conditions do not meet the demands of the commerce of the country, and without these changes, relatively speaking, our transportation system is a failure?

Mr. THOM: Yes, sir; and Government ownership inevitable.

Mr. SIMS: If we do not pass legislation substantially along the lines you have marked out, there is only one logical conclusion to reach, and that is Government ownership must come, in order to have transportation at all?

Mr. THOM: You say substantially along the lines I have marked out.

Mr. SIMS: I mean so as to accomplish the purposes you have marked out.

Mr. THOM: Do not lose sight of the fact that I have been put, by the action of this Committee, in front of these proposals, and my desire was to hear some of the independent thinkers of the country to see what effect that might have on the suggestions I might make. I am still in that open-minded condition, and there may be members of this Committee, and other people, who may appear, who may suggest a wiser program than I have done, but unless things are accomplished, as you have put it—unless these things are accomplished to strengthen the railroad credit, and enable the situation to be so brought about as to cause people to regard railroads as a stable thing in which to invest safely, in my opinion, the time is short between now and Government ownership.

Mr. SIMS: And governmental ownership is made inevi-

table on the failure to legislate so as to accomplish the purposes you mention?

Mr. THOM: Yes, sir; then I say also that all the talk we are having about the States has no real place in this investigation, because, if something is not done to stabilize the present system, and to bring the necessary amount of money into it, then Government ownership will come, and then State control of all sorts will go. So, I am trying to retain as much as I can, with safety to the general system, all State participation, because that is the only way, in my judgment, that will obviate ownership, and when Government ownership comes, then there will be but a single interest and single power, and every divided power must disappear.

Mr. SIMS: I think you state the matter so any of us can understand it. Then, the basic grounds of the investigation here, if I understand them, should be conducted along the lines of ascertaining whether or not it is best to avoid Government ownership by legislation that will result in enabling the railroads to perform the services as they should be performed, either through the suggestions you have made or some other legislation that will accomplish the same result?

Mr. THOM: That is my judgment. I think you have stated it accurately.

Mr. SIMS: Then the issue between private ownership and public ownership, by making private ownership possible in this present condition, is not possible or feasible or practicable, without some remedial legislation?

Mr. THOM: The present conditions cannot continue.

Mr. SIMS: And so, then, without any question of the remoteness of the matter or the immediateness of it, if the conditions must be changed in order for private ownership to be successful, we cannot too soon change the necessary conditions to that end?

Mr. THOM: That is my judgment.

Mr. SIMS: Now, what is possible in physics or mathematics is one thing; what is possible in legislation is another thing;

what is impracticable in legislation is therefore impossible; that is, it may as well be physically impossible. We are confronted with the old settled idea, that each State has rights which it ought to exercise, and which should never be exercised by a central power, and can never be exercised by any central power, with the same benefit locally. We have people all over the country with different views, and we are just representatives of those people, in those different States, with those different views, and therefore I think this investigation ought to be as broad and as unlimited as is necessary to meet all these suggestions and views of the public generally, and of those who do the voting, as well as gentlemen upon whose responsibility the future operation of the railroads depends.

Now, there is no proposition before this Committee—nobody advocating it—for a legislative proposition about Government ownership at this time. Consequently, it seems to me an examination of these propositions, as fairly as we can, the possibility of getting them enacted into law, is the practical work for this Committee. That is my own view of it. If I am in error about it, I want to be corrected.

I want to say, as far as I am personally concerned, Mr. Chairman, I have absolutely no prejudice. I never was employed by any railroad company in my life to render any form of service for them; I was never employed by anybody to represent them against the railroads. I live in a county that is uncontaminated by a single mile of railroad, and, consequently, cannot have any personal feeling for or against the railroads.

Mr. THOM: I have often said that those who know most about the railroads are those who never saw a railroad.

Mr. SIMS: But I have seen them.

Mr. THOM: We have one district where a railroad runs right along the edge on one side, and right along the edge on the other side, and the most radical things, so far as the railroads are concerned in that State, come right from that district.

Mr. SIMS: But I am not proposing anything radical. What I am referring to are practical things.

Mr. THOM: But I mean the people who see the country going to ruin from the railroads are there.

Mr. SIMS: I will tell you why we have no railroads in my county. It is a good county. It has phosphate, iron ore, timber, building stone; farm land—good agricultural land—and the county has, on several different times, voted a bond issue of \$50,000 to any railroad that would cross that county, that is, either north, east, south or west, and a railroad was being built from Memphis to Nashville, called the Tennessee & Midland, and after it got built to the Tennessee River, which was practically a half-way point, why the man who was in charge of it then died. He was a Mr. Morse, from St. Louis. The Louisville & Nashville Railroad Company, in the administration of his estate, bought up the stock of that railroad and then, owning the Nashville & Chattanooga Railroad, by a majority stock, leased it to the Nashville & Chattanooga and prevented its being built.

Now, that is the helpfulness that we have had towards getting a railroad built through our good county. They are not to blame for it, because the railroads will not even build one when the money is offered to them. There stands an authorized bond issue to build one now through my county, but for some helpful purpose or another, they are never able to get there. So, there is a portion of the country unserved by railway facilities, that they have done everything they know how to do, in an effort to get a railroad there, even to the extent of voting a bond issue. So, if I have any prejudice in this matter at all, it exists on account of that local condition there. I think the railway systems of this country should be built up so as to develop each undeveloped section of the country, and that if the rate—if the amount of business through that county will not pay for building a railroad across the county, that is no reason why it should not have a railroad.

Mr. THOM: One of the great difficulties which men charged with comprehensive duties have to meet, is some local condition, such as you have described, where somebody has not got just what they think they ought to have. Now, it is manifestly injurious to the public interest that the great question of transportation should be affected at all by some local condition.

Mr. SIMS: I think you are right about that.

Mr. THOM: I sympathize with your criticism. I never heard the facts in that case before, but that condition of affairs you say, if you have any prejudice, creates it. Now, you come on this Commission. You have great national responsibilities on your shoulders. You have got the fate of this Nation in your hands. You have got to help determine the standard of commercial possibilities for the future, and you come to it, as you say, from that situation. Now, cannot we get away from those conditions, when we are dealing with so great a subject as this, and that would illustrate may plea for trying to have a national regulation of a matter so national in its character.

Mr. SIMS: Well, I stated this fact or story I have told you, for two reasons: I think the committee and yourself ought to know whether or not there is any local condition that affects my judgment—if it does affect it,—but the point I was trying to reach was another matter entirely, and that is this: The strife between railroad companies under the existing conditions—the struggle to shut out railroad competition in their regional field—has forced communities like my own to suffer. That action in preventing the building of this railroad was not to keep a railroad from being built in my county and the contiguous counties, but it was done to prevent competition at Nashville, Tennessee.

Mr. THOM: Yes, sir.

Mr. SIMS: Between some other railroads.

Mr. THOM: Yes, sir.

Mr. SIMS: Now, the destructive work of competition be-

tween railroads has actually over-developed some sections and actually prevented the development of others.

Mr. THOM: Undoubtedly, and now right there I want to say I think that is a very mistaken railroad policy. I believe that railroads are bound to succeed by virtue of the prosperity of the communities they serve, and that if Nashville could be built up by a number of railroads going there, it is vastly to the advantage of every railroad in it to have Nashville so built up instead of keeping some railroad out. We have got a point on our road, I have not talked with this president of the railroad, but I have talked with his predecessor, and I know it was his policy to do nothing to prevent the construction of a railroad other than his own into that point, because he felt by so doing if that point was built up he would get more trade from the prosperous community than he would get from the community that has limitations, perhaps, put upon it by being served by a single line. I entirely agree with the philosophy which suggests your remarks there. I do not believe in that policy, and I believe that as the wisdom of governmental regulation grows so we may hope for the policies and views of railroad managers to become expanded and to grow likewise and to take a more comprehensive view of this problem than some of them have thought wise heretofore.

Mr. SIMS: In the interest of the whole public I believe that, comparatively speaking, relatively speaking, the present system is an absolute failure. Now I read from a speech delivered by yourself at Atlantic City, October 1916, in which you say: "The average movement of freight in the United States is 24 miles a day."

Mr. THOM: I have received a letter from one of the principal railroad presidents of the country about that statement in that speech and he has called my attention to the fact that 24 miles a day includes the movement of all cars while they are waiting for loads at points of loading, and on sidings, and in yards, in transit, and all that, and since his letter I

have tried to get the exact figures which I have not yet done, and I have not again used that illustration because I don't know whether it is so.

Mr. SIMS: It is substantially correct, I take it, is it not?

Mr. THOM: I do not know.

Mr. SIMS: Twenty-six or twenty-three miles, or something of that sort?

Mr. THOM: I do not know the figures.

Mr. SIMS: What is the relative gross receipts of railroad companies from freight and passenger traffic?

Mr. THOM: The freight traffic is very much greater.

Mr. SIMS: Is it not about three to one?

Mr. THOM: I do not know. I suppose it is different with different companies. The New Haven Railroad has about one-half.

Mr. SIMS: I am talking about all railroads.

Mr. THOM: I do not know, but it is very much greater for freight.

Mr. SIMS: You say further: "There is an average movement of the freight car of one mile an hour throughout the country."

Mr. THOM: Well, that is the very point I say Mr. Willard, in writing to me, says I am mistaken about, those figures; that the movement of cars while in motion was, of course, vastly greater than that, and he gave the figures, told me in that letter——

Mr. SIMS: I mean that each car during the year, upon the average, moves only one mile in one hour of time, including all the movements it makes, including the time it is lying at a siding or at a terminal, that the car itself operated in the freight service only moves one mile in one hour, or 24 miles a day?

Mr. ADAMSON: They are not counted until they are loaded, are they?

Mr. THOM: That is what I say, I have not been able to get at the bottom of it. I am trying to verify that statement

because it was called to my attention by a letter from Mr. Daniel Willard, of the Baltimore & Ohio.

Senator UNDERWOOD: If you will allow me to interrupt, I think you will find the question embraced in the report of the Interstate Commerce Commission a year or two ago in reference to loaded cars, and my recollection is the report shows they moved 24 miles a day, that is the time on the average, that included the time on side-tracks and on spurs.

Mr. SIMS: That does not include the time actually in transit, I should say?

Senator UNDERWOOD: No.

Mr. SIMS: Then it does include substantially the movement. Now I want to say there is three-fourths, if I am correct about it being three-fourths, of the gross receipts of the railroad companies of this country earned upon cars moving at a snail's crawl, and they are carrying the freight traffic of the country upon which the people must live, and upon which business must prosper or fail. I do not see how it is possible at this day and time for such movement of freight, upon the average, to serve the public interests of the country.

Mr. THOM: There ought to be double-tracks.

Mr. SIMS: There ought to be what?

Mr. THOM: There ought to be double-tracks so that we would not have to wait for the car moving in one direction to let another one going in the other direction have the right of way for hours. There ought to be more extensive yards; there ought to be perhaps greater traction power; there ought to be greater transportation capacity, and, as I say, that is a question which is confronting the American people today. You may rest assured that whatever movement there is of those freight cars is spurred on by the very influence that you are now referring to. Those railroads want to make that money. They are deliberately leaving that car at that rate of speed when they could make more money if they could move it faster. There are physical

limitations upon it. You have got men who have grown up with the business, the wisest and best and the most skillful that the country can afford to try to get that car along, yet their physical obstacles are so great that even the immensely increased revenues they would get from a quicker movement are not open to them, and we are coming here to plead for the credit to enable us to double-track our road, to enable us to increase our sidings and yards, that will enable us to increase our capacity in every respect.

Mr. SIMS: But the fact remains and seems to be proven, and what you have just said, that under present circumstances, with the railroad operatives doing all they can to serve the people by way of moving the products of the country, that its movement is relatively a failure?

Mr. THOM: It is too slow.

Mr. SIMS: It is too slow and does not meet the requirements of business, the requirements of commerce, and that that itself accounts for what is now called the shortage of cars. If these cars were moving on an average of 50 or 52 miles a day, twice as fast as they are, they would naturally carry twice the products they are now carrying, consequently you would have, with the more rapid movement, a surplus of cars with the present supply?

Mr. THOM: Possibly, with a greater track capacity and other conditions making such a faster movement possible.

Mr. SIMS: In order that this faster movement may come about, the double-tracking, the increasing of facilities for the loading and unloading, and all that kind of thing, must necessarily come before this freight can be moved as it should be moved, is that not correct? We must have the instruments you have just detailed in order to enable the country to receive the service it is entitled to receive, and which is necessary?

Mr. THOM: I do not think we can get the best service until its facilities are improved.

Mr. SIMS: Without the best service they cannot afford the

best national development? It would be utterly impossible?

Mr. THOM: Yes, sir.

Mr. SIMS: Now then, the improvements that would necessarily be required in order to give the best service,—not a service that is just simply tolerated, but the best service to the whole entire country—would call for an expenditure of money, under present conditions, perhaps approaching the present investment, would it not?

Mr. THOM: I think, from investigations I have made—I have not conducted them myself, but I stated here the other day figures about what would be needed. We must remember that the American people up to this point are pretty prosperous; that while their methods of doing business are not in the most perfect condition, yet they prosper; the nation has grown; the nation has been developed; their transportation business up to now has been carried on fairly well; there is a great deal which has been done, notwithstanding the situation which you refer to, and we are not preaching, but unless growth is stopped we have got to perfect our facilities for the future.

Mr. SIMS: When growth stops death sets in, does it not?

Mr. THOM: It does indeed, and that is what I am trying to avoid.

Mr. SIMS: What I am trying to find out is whether you have any estimate at all of the amount of capital that the railroads will require, what you gentlemen call new money, additional capital to include the railway facilities of the country that now exist and add to them such as may be necessary to properly develop undeveloped regions of the country, about what per cent, if you know or have an idea relative to the present investment, will be required in the way of new investment?

Mr. THOM: About eight per cent annually for the next ten or fifteen years, which would mean about \$1,250,000,000 a year.

Mr. SIMS: In other words, in twelve years it would be double what the present investments are?

Mr. THOM: Yes, sir.

Mr. SIMS: Now I want to bring to your mind a question in regard to that. I am not, of course, a railroad man, but I take it you are correct, or substantially correct, in saying that much money will be required provided that is done which ought to be done for the public interest for the development of the United States, and not any particular portion of it. I think I heard Mr. J. J. Hill a few years ago make a statement substantially along the lines you have made before a Congressional Committee of the Senate. Now then in order to secure that much money as a certainty is certainly a very serious consideration as to how to get it, and without acquiring the money the improvements cannot be made, and without the improvements the country cannot progress?

Mr. THOM: Yes, sir.

Mr. SIMS: And would have to continue in its present unsatisfactory condition?

Mr. THOM: And therefore the time has come for you gentlemen, for you responsible statesmen, to consider whether something must not be done of the far-reaching nature that you have referred to here to provide for those public needs which all of us see are coming.

Mr. SIMS: Should any country as great as the United States is and with the necessity for provision for future development have to depend upon that development alone, upon market conditions for private securities during the long series of years which may be affected by wars and famines and such things as may interrupt the steady flow of private income?

Mr. THOM: I think it can be safely done for a number of years to come. As Mr. Olney stated it in that wonderful memorandum I read here the other day, it may be found on sufficient experience and experiment that Government ownership is the only solution, but in his judgment, and he is a very wise man, the time has not yet come for

despair and to conclude there is no other way out of it, and that we ought at the present time assume there is some other way out and try to find and perfect that way.

Mr. SIMS: It is possible for the railroad companies to judge for a period of twelve years in advance what their operating expenses are going to be and what they are going to have to pay in the way of interest in order to secure capital for a new development?

Mr. THOM: Not with certainty.

Mr. SIMS: Not with certainty?

Mr. THOM: There can be a comparatively safe forecast of what is going to happen. We cannot tell.

Mr. SIMS: Judging of the future by the past?

Mr. THOM: Judging of the future by the past. That is the only thing we have got to go by.

Mr. SIMS: Now, should the development of a great country like this be a mere speculative matter, that we have got to guess at what things will be in the future?

Mr. THOM: We have done so up to now, and we have gotten along pretty well.

Mr. SIMS: We have struck a snag so to speak.

Mr. THOM: We have gotten to a time when it is now proper for us to take our bearings and see where we are, and see if something cannot be done to improve our situation.

Mr. SIMS: You made a statement yesterday, in substance, that the spirit of adventure had built our railroads; that what was called stock watering had been one of the leading inducements to cause one to make an investment that they would not otherwise have made, but it is perfectly evident that that period has passed, and that the investment in a railway security, especially in stock, must be so attractive to a new purchaser as to enable him to discount the possibilities of what has happened to former investors in railroad stock.

Mr. THOM: You have got to substitute safety.

Mr. SIMS: For uncertainly.

Mr. THOM: For possibilities.

Mr. SIMS: Speculative possibilities?

Mr. THOM: Speculative possibilities. Your system of law has got to find some way of attracting by safety, instead of depending on speculative possibilities.

Mr. SIMS: Then, we have reached that period in our country's system in which we cannot possibly rely on further railroad development, on the method that has heretofore been used, for the present development?

Mr. THOM: Yes, we have reached that point.

Mr. SIMS: So there is no use in considering the old methods of offering stock bonuses and speculative methods, or such a high rate of interest as of itself to suggest the insecurity of——

Mr. THOM: Not except as methods of enlightening your future actions.

Mr. SIMS: Yes. But I do not think, speaking as an individual member of this committee, when it is made so plain by expert evidence—I am regarding you in this matter as a super-expert, as you represent all of the experts combined, and have had the opportunity to confer with them all—that the future development of this country ought to be conditioned upon the sweet will of men who have got money, as private individuals, as to whether or not they will invest it in an industry like the steel corporation or in a farm or in railroad stock. If it does, why then we may make changes that are temporary. We may benefit present conditions, but why not make things as near a certainty while we are at it as possible?

Mr. THOM: You mean by Government ownership?

Mr. SIMS: There are more ways, but I do not see how you are going to convince the people of Europe, or the people of this country for that matter, that future railroad stocks and bonds are going to be a better investment than they have been in the past, to such an extent as that they will yield

par for a four per cent dividend, or five per cent, or six per cent, unless there is something in the nature of a Government guarantee, something along the line that they can rely on, regardless of mismanagement, regardless of the accidents, stock failures, possible wars, the revolutions and things of that kind affecting our commerce, both domestic and foreign. So now it seems that just simply wiping out some of the abuses, and to that extent new methods of regulation that will avoid some of the difficulties that now exist, will be a guarantee that the public will take more than a million dollars of new railroad money for the next ten years—more than a billion dollars, I mean—now, then, it comes down to the point where the Government must guarantee a dividend, sufficient to pay this four per cent, or five per cent, or whatever it is, or it must go security to the railroads, by guaranteeing their bond issues, or in some way getting behind the railway—the future railway development of this country, so as to remove that uncertainty which now deters private individuals putting their money into the railroads. Now, it seems to me we have got to consider something on a very broad scale.

Mr. THOM: Judge, my own view was that the country was not ready to guarantee these railroad funds. I may be mistaken about that. You may be right in thinking that it is, and that is the solution. Being of the judgment that the country was not ready, and it would not do that, that it is not a practical matter.

Mr. ADAMSON: Mr. Chairman, I do not think it is probable that——

Mr. THOM: Let me finish this sentence, please, Judge. Being of that conclusion, our minds naturally went towards the point of trying to improve the conditions under which we might deal successfully with that problem for awhile. Now, of course, evolution of railroad questions, as of any other great governmental question, does not take place in a moment. If Government is ready to guarantee the return

on these securities, that is one thing. Assuming that the Government is not ready for that, we have pleaded for a situation in which we feel that we will be able to perform our public duties by an improved condition of regulation.

Mr. ADAMSON: Mr. Chairman, I suggest that Judge Sims suspend here and conclude his examination tomorrow.

The motion was agreed to and at 1:22 o'clock p. m. the Joint Committee adjourned until Wednesday, November 29, 1916, at 10:30 o'clock a. m.

WEDNESDAY, November 29, 1916.

The Joint Committee met at 10:30 o'clock a. m., pursuant to adjournment, Senator Francis G. Newlands presiding, also Vice Chairman, William C. Adamson.

Present: Senators Robinson and Brandegee; and Representatives Sims, Cullop, Esch, and Hamilton.

Mr. ALFRED P. THOM resumed the stand.

The CHAIRMAN: The committee will come to order. Mr. Sims, will you proceed with the witness?

Mr. SIMS: Yes, sir.

Mr. THOM: Before Mr. Sims begins, I made a reference yesterday to a letter I received from Mr. Daniel Willard, on the subject referred to in Judge Sims' examination, and with his permission and with the permission of the committee I should like to read into the record an extract from that letter. It relates to the average movement of freight cars, referring to the statement which I made at Atlantic City and which was quoted by Judge Sims yesterday. Mr. Willard proceeds as follows:

"You say, 'One of the States has a law requiring its freight to be moved forward at a rate of not less than 50 miles a day. The average movement of freight in the United States is 24 miles a day.' What you meant to say, I take it, was that the average miles made per day by *all freight cars* in the United States is 24, which I am sure you will agree is quite different from saying that the average movement of freight in the United States is 24 miles per day. As a matter of fact, when freight is actually moving I doubt very much if the average speed is less than 10 miles per hour, and usually when moving, freight cars will go over at least one division of 100 miles per day. In the case of the freight *car*, however, it must be kept in mind that the *total time* of the car must be accounted for—that is to say, not only the time while it is actually moving, but also during the 48 hours which the shipper is given to load the

car and the 48 hours allowed for unloading, and any other delays which may happen to the car during the entire year, due to accident, slack business, etc.

"I have taken the liberty of writing you about this matter because I have no doubt you will have occasion frequently to refer to the same subject in your public addresses, and otherwise, and on that account I thought best to point out the distinction which I think should be drawn between the average movement of freight and the average movement of the freight car."

Mr. SIMS: He is correct; your statement is the average movement of freight in the United States, 24 miles per hour. He is correct in that?

Mr. THOM: Yes, sir.

Mr. SIMS: Which you accept?

Mr. THOM: I accept what?

Mr. SIMS: The statement of Mr. Willard.

Mr. THOM: I am trying to have that whole subject developed by having the statistics checked and I have not got them in such shape yet as to present it.

Mr. SIMS: When we took a recess yesterday we were on the subject, at least indirectly, of railroad credit, or what would be necessary to be done in order that the railways of the country might receive the necessary new capital at such rates of interest as would enable them to make the required new developments that ought to be made in order to meet what seems to be admitted, both by yourself and everyone else, as absolutely necessary, or, failing to do so, we shall arrest the commercial growth of the country. In substance, what your conclusions have been, as announced in your former statements, as I understood them, was that something must be done to attract the private investors sufficient in itself to enable railroad companies to market their securities in competition with all other kinds and characters of investments that would be open to the private investor. Your conclusion, as I understand it, was, that if legislation, along

the lines you have suggested, was carried out, that then the stocks and bonds of railroads—in other words, railroad securities—would prove sufficiently attractive to cause the private investor in competition with all other forms of investment offered, to take these securities in such volume as would enable the railroads to do that which they admit, or you represent they should do, or is necessary to be done, so that we shall not have a continuous State of arrested commercial development. Now, we were on that point and I made the suggestion with reference to the Government guaranteeing minimum returns upon these new issues of stock or bonds, or both, a sufficient length of time so as to remove the element of uncertainty that now exists, and in that way, while reducing the rate of interest charged to the public carriers, really making a form of credit investment that would be desirable over all other securities offered, not guaranteed by the Government of the United States or some other guarantee of equal solvency and ability.

I, of course, am not a railroad man, and cannot go into those things except in a very crude way, but I wanted to ask your opinion as to what you think would be practical, provided that in legislation that might be passed giving the Interstate Commerce Commission, or some other Government authority, the power and placing upon it the duty to approve all future issues of either stocks or bonds of railroad companies. Would it be practical, and would it serve the purpose, if, after the Government had approved these issues that it should guarantee that the interest return or dividend return upon this specially authorized stock issue should not be less than a fixed amount, say 4 per cent, giving to the investor the opportunity to receive, if he is a purchaser of stock, any additional dividend that might be earned from a Government-regulated railroad company, as in the nature of a speculative inducement or in the nature of a bonus, so to speak? That is, if the company makes it under Government regulation 6 per cent which it can devote to dividend

on the stock, that it should not be prevented from doing so, provided this Government authority, regulating these things, did not intercede and prevent it from the idea that it was not authorized by the conditions of the carrier; the Government not guaranteeing the ultimate value of the stock, but simply the regular payment of a dividend for a certain period of years, twenty, thirty, or forty, or fifty, or whatever might seem to be practical. I want to ask you whether or not you think such a system as that might relieve the situation, and, at the same time, not involve the Government in any probable or possible ultimate loss, not remove the properties of railroads from State control, I mean to the extent of taxation, police regulation, and so on, giving the Government the right to be represented in any meeting of the stockholders of such a company and making it necessary that the Government director, if we should call him such, the Secretary of the Treasury, the Secretary of Commerce, or whoever might be authorized by legislation to act, should approve all arrangements and regulations of that railway company just as though it was a private owner of the same stock, to the end that the Government might be protected against a possible loss of this guaranteed dividend.

These are only suggestions, crude thoughts, and I have thrown them out for just what they are worth, to the end that what seems to be undesirable by some people—I mean the inevitable, undesirable effects—at the same time to have behind a railroad security both a moral and a financial guarantee that would appeal to the investors both at home and abroad over an investment, even of like character, but without governmental, moral, and financial responsibility. I will just ask you, have you given this thought, or have you thought along that line? Have you given it consideration?

MR. THOM: You present an exceedingly interesting point of view, Judge. In the first place, I would like to call attention to perhaps a little modification that should be made in your statement of my view, so that the record shall not be—

Mr. SIMS: I do not want to misstate it, of course.

Mr. THOM: Of course I appreciate that. I do not think you will find that I have ever said that, even if everything that we have suggested is done, there will be no need for something further to be done in respect to a constructive system of relationship between the government and the railroads. I regard what we have proposed as an immense step in the direction of stability. Wonderful progress will be made, if we can get those elements of sympathetic co-operation between the Government and the railroads which we have suggested. Now, I have never assumed that we could get everything that was necessary, at one effort. I have no doubt it will be a developing situation, in which Congress will have to study it from time to time, as the conditions are presented, and will have to deal with it in a progressive way, but that what has been now proposed will be a tremendous step in that direction.

Undoubtedly a Government guarantee of income will be a most tremendous element in the value of these securities, and would very greatly attract investors, but you ask me whether I have given any consideration to that. I have not given consideration to it as a practical matter, for the reason that I never supposed that the Government would make such a guarantee. Now, if that is in the range of possibility, that is a very important thing to be considered. A Government guarantee of income would be a tremendous attraction. For example, take the securities that are going to be issued under this new rural credits system, which come with the apparent backing of the Government, even free from taxation. Now, it is the general opinion among financial men that when those things are issued they are going to be very attractive, because the Government is behind them in a way. Now, if the Government chooses to get behind the securities of the railroads, of course, that is going to be a tremendous factor, but I call attention to the fact, if you will permit me one moment, that the tendency of the ques-

tions which you are asking is to base them upon a recognition of a condition in respect to railroads which is in accord with what I think it is, that there is a present condition calling for decided helpfulness on the part of the Government so as to continue these facilities up to the point that the commerce of the country requires. Your questions are based upon that as a fundamental. I do not mean that you necessarily think that, but you are asking these questions based on that assumption. That is my belief. The only difference between the tendency of your questions and my own judgment is that you are suggesting remedies far beyond anything that I believe to be practicable, from a public standpoint. I do not believe the Government is going to do that. I would think that if the Government is ready to do that, the whole subject ought to be reviewed in the light of that willingness on the part of the Government, but I have assumed that we have a condition here which your questions indicate must be met by some real, earnest, serious governmental effort, in order to meet the public needs of the future, and even the present, in respect to the facilities which commerce needs. We feel that as long as these properties are privately owned, that the Government will expect us to see that they are kept up to the needs of commerce, provided the Government affords us such encouragement in its regulations, such helpfulness and constructiveness in its system of regulations as will enable us to do it, leaving the responsibility on us to do that, and testing finally the system of private ownership by our success. You cannot test the success of the system of private ownership under a system of regulation, where only the correction and repression are the main features. You can test a system of private ownership, when you have given to the investors in these facilities all the reasonable aid which Government can give, and when you have done that, when you have perfected your system of regulation by introducing, in addition to your present powers of correction and punishment, the power that

the Government may give in the way of helpfulness and encouragement—I mean reasonable and proper helpfulness and encouragement—when that is done and tested, of course we appreciate that there will be the supreme test of private ownership. We cannot have it now, because the system of Government ownership denies it to us anyhow. We will have it then, because the system of private ownership will have been helped by the Government in every reasonable way. Then the question will come up, and on that question will depend the future of this government. If we break down, after having been helped to the extent that Government can reasonably help us in the system of regulation—if we break down—then the commerce of this country is not going to contend with inadequate facilities. When private ownership fails, there will be a demand from everybody that the Government shall take its place, and thereupon we will have whatever that means to our system of Government. One man may think that means one thing, and another another, but we all know that it is an unknown world which we will be entering, to engraft upon a democracy the immense strain of Government ownership of transportation facilities, with its army of employes. We know that that will be a great strain. I do not believe that that ought to be accepted as a solution, until we find there is no other way out, and, therefore, I have addressed myself, in your presence, earnestly to establish the purpose of creating the conditions that will, I hope and I think, save the system of private ownership of these railroads. I believe that to be in the interest of the public, and of our system of democratic government, infinitely more than it is in the interest of the security holders; and if I may be permitted a personal word, if anything that I can do will tend or help to bring about that result, I will feel that I have not labored in vain.

Now, in connection with another aspect of your question, I wish to introduce at this point an idea that has been sug-

gested to me since these hearings began. As bearing upon the conditions which we will have to confront in respect to getting new money for these railroads, the various matters which I have mentioned in that connection are in the record, and probably are remembered by you gentlemen, but here is a letter from a most distinguished man, a financier, who is at the head of the new governmental banking system of New York. I think he is the governor of the Reserve Bank of New York. I do not know exactly what his title is, but it is Mr. Benjamin Strong, who was formerly president of the Bankers' Trust Company, and is now the head of this new banking system in New York, and he calls attention to an additional matter which the statemanship of this country has got to confront in dealing with the matter of railroad credit, and that is this: The effect of the European War on interest rates. Now, his view is this: He says in England they are now paying six per cent for money that they used to get for less than two per cent. France is paying six per cent for money it used to get for less than one per cent. That, of course, has a tremendous effect upon the level of interest during the war. The problem that men of affairs have got to deal with, and that the statesmanship of the country has to deal with is, what is going to be the effect on interest rates after the war? Is this four per cent you are talking about going to be a legitimate return on money after the war, or will the effect of the immense demand for capital abroad, in reconstructing Europe when peace comes be to make such a demand for money as to greatly increase the rates of interest, and if it will there will be a tremendous competition established with railroad securities, and the amount of interest they will have to pay for new money will be affected greatly by it.

May I read a portion of this letter:

Mr. SIMS: I have no objection, of course.

The CHAIRMAN: Certainly.

Mr. THOM: It is a question we would like to——

Mr. SIMS: I would like the information.

Mr. THOM: It seems to me it would be of some importance. I will read the whole letter. It is written by Mr. Benjamin Strong from Denver. He is out in Denver and has evidently been out there for some time—to Mr. Trumbull, who is the chairman of this Railroad Executives' Advisory Committee, written on November 8th:

(Reading:)

"DEAR MR. TRUMBULL:

"Since replying to yours of the 31st, I have been over the various documents you were good enough to send me bearing on the subject of railroad regulation.

"Every time I read literature on this subject, the difficulties stand out stronger and my own unfamiliarity becomes more apparent. The three suggestions outlining the scope of information desired struck me as being very ably and thoroughly prepared but I am constrained to make one modest suggestion where I believe the subject has not been as extensively developed as it should be.

"We all recognize that the war is bound to have an unsettling influence upon rates of interest all over the world for many years to come. The British Government is paying 6% interest for short loans which a few years ago it had no difficulty in placing at less than 2%. The French Government is paying between 5% and 6% for short loans which in times of peace it had no difficulty in placing with bankers at times at less than 1%. These developments have had as yet but slight effect upon the level of interest rates in this country because the influences of war conditions here have been quite the reverse of those which are found abroad. When peace lets down the bars and the financial currents begin again to flow normally, what will be the general effect upon interest rates and how will it be felt in this country? I am inclined to agree with Professor Fisher who believes apparently that the whole world is more likely to face considerably higher rates, rather

than with those who believe that relaxation of business activity will bring about lower rates.

"As applying to the railroad situation, which is peculiar to itself in that railroads cannot readjust their rates to meet economic changes, I would suggest a line of inquiry somewhat as follows:

"1st. What will be the general effect of the war on interest rates?

"2nd. Will considerable differences in rate levels abroad and in this country influence further sales of American securities now held in Europe?

"3rd. Will such difference of rates likewise preclude the possibility of sales of railroad securities in foreign markets in future years?

"4th. Will the course of interest rates following the war have any effect upon certain special domestic markets for railroad securities such as trust funds, savings banks, insurance companies, etc.?

"5th. Is the margin of railroad earnings now sufficient to enable railroads to finance by issues of stock, when upon the conclusion of the war, business slackens, earnings decline and interest rates advance?

"6th. The same inquiry should be made as to financing by bond issues.

"7th. If rates do advance sharply, what will be the situation of those roads which in past years provided for their requirements by large issues of short-term obligations?

"Some of these points are already covered in the questions addressed to bankers, etc., and I realize that the above suggestions are no more than the surface of a subject of tremendous importance and uncertainty.

"I think the safest guess as to economic conditions after the war ends can be described by stating that the United States will be in competition with

all belligerent nations in all markets of the world and in all departments of financial and commercial activity. The conditions of production here will be based at first upon the highest wages ever paid in this country, nominal taxes as compared with Europe and much lower interest rates at first than will prevail abroad; whereas, the belligerent nations will have very cheap labor, a tremendous burden of taxation and at first considerably higher rates of interest than ours.

"If there is one thing which experience demonstrates in this country, it is that wages readjust more slowly than any other item in the cost of production. Taxes are fixed and cannot be readjusted. The first readjustment and always the promptest to take effect is the value of credit, that is, interest rates.

"In presenting the case of the railroads, it will be impossible to avoid dealing with a good many controversial features of the railroad situation. Here is one subject of vital importance to the railroads which can be developed to great advantage without inviting the antagonism of stockholders, wage-earners or shippers. It has nothing to do with the character of the regulation which should be applied to railroads, but it has a great deal to do with the reasonableness of methods applied in regulating their affairs.

"You asked me for suggestions and these are the only things which occur to me that do not seem to be very fully developed by the documents sent me. I hope your hearings at Washington meet with the great success which they deserve.

"With warmest regards,

Very sincerely yours,"

The CHAIRMAN: Have you given the signature?

Mr. THOM: Benjamin Strong.

Mr. SIMS: I failed to state, but, necessarily, it should be a part of my statement, that in case the Government should guarantee a minimum dividend on stocks and a minimum interest on bond issues, any railroad company making application for such a guaranty would have to provide that in

case there was a loss to the Government, the loss should be a first lien on the properties of the company, so that the Government would not ultimately lose anything. I intended to state that as one of the conditions upon which government guaranty should be obtained.

Mr. THOM: You can readily see that if every amount—every cent—that is paid to a stockholder in current revenue becomes a fixed charge ahead of his rights thereafter, it will be a very serious question with him as to how far he is undermining his ultimate security.

Mr. SIMS: I am not presupposing at all that the application should be compulsory, but that when such railroad companies as might think it would be of economic advantage to them should make this application for a guaranty.

Mr. THOM: Yes.

Mr. SIMS: They could also make application to a government agency authorized to approve the issues of stocks, without any guaranty condition going with it. You will remember, perhaps, that when we had this question up before the Committee on Interstate and Foreign Commerce of the House—I mean, the question of regulating railroad securities by approval of the Interstate Commerce Commission—making it conditional upon their approval—that some very learned gentlemen, among others, one of the members of the Interstate Commerce Commission, Mr. Meyer, who was a member of the Hadley Commission, presented the view that public sentiment would regard the endorsement or approval of a bond issue or an issue of stock by a common carrier as a pledge upon the part of the Government of the United States that it would not deny such a rate to that railroad in the future as would enable it to provide for the payment of these securities which it was authorized to issue; and also to be based upon the condition that it would not deprive the railroad of opportunity to carry out any existing obligation by way of paying interest on securities—reasonable dividends upon its outstanding issues; in other words, it would be in the

nature of a moral obligation that the Government would not afterwards reduce the rates so that the railroad company getting the approval of the Government for its issue, which it would have to have under the proposed law, would not be able to pay this authorized rate of interest; which made the Government practically a guarantor. I have stated it just from memory, and I am not trying to state accurately the view of Mr. Meyer, and others who expressed the same view, but that is a thought which they suggested with regard to what would take place in the public sentiment. Now, if the Government of the United States is going to be hampered in the regulation of freight rates by the approval of outstanding securities which it has approved, it would hamper itself in the future, so far as that is concerned, to give anything like substantial rate regulation, at least on the railroads the securities of which it had approved, and not only to the extent of those approved, but as to all outstanding prior securities, which, of course, is a condition that ought not to be invited and ought not to be encouraged; at least, it did not strike me that way. I did not believe it was a legal obligation myself, but these gentlemen regarded it in the nature of a moral guarantee of profitable returns, and that is one of the reasons that led me to think about a specific absolute guarantee of a sufficient income on the railroads' properties, by making it a preferred liability upon other outstanding obligations of the railroad company. You have mentioned a difficulty that we have got to meet; that is, that present conditions are impossible of continuance in the successful development of the country. Now, it seems to me, Mr. Thom, that the question is not whether we want or do not want government ownership; the question is what shall we do, consistent with the demands of the country, that will prevent the necessity of Government ownership? Now, between absolute government ownership and present conditions, the thought occurred to me of a co-operative affair, by reason of having the Government to approve additional issues and

to guarantee a minimum income upon those issues, leaving the property or the owners of the property the right to pay more than that guaranteed dividend, if the Government, through its proper authorities, approved, and giving the Government the power, by way of governmental directors, to decide whether or not this railroad property, after getting this guaranty, should do this, that or the other thing. In other words, as a co-operation of a valid and material kind. Now, I do not know myself whether the public would take hold of this at all, or not; I do not know what the public is going to approve, but I think we are all agreed that present conditions will not develop the country.

Mr. THOM: Yes, I think we are.

Mr. SIMS: And none of us knows whether the plans that the railroad men have proposed will do it, or not, and we do not know whether government ownership would fully meet all the requirements of the situation or not; but we are up against a situation where we must do something.

Mr. THOM: Undoubtedly.

Mr. SIMS: Now, you made a very interesting argument along the theory that the proper development of our railways was a necessary step in the national defense. Is this country to depend for the proper development of its national defense upon the markets for private securities, fighting the demands of all the world for a number of years to come? The letter which you have just read points out what will probably be the case; that attractive investments that have not heretofore flooded our markets will flood them. Now, is the national defense of this country to depend upon the ability of privately-owned properties to float their securities in competition with the fierce demands made by these abnormal conditions throughout the country, perhaps for an unknown number of years?

Mr. THOM: Now, Judge, we will both admit, I imagine, that it is better, from the standpoint of national defense, to have the National Government establish the standard of

efficiency of the railroads, rather than that should be in a position to be pulled down by forty-eight States, not charged with the duty of national defense—at least, that one thing we must agree on—that if there is this duty of national defense (and we all agree that that does exist, and that it does exist in the interest of the States), then that the standard of efficiency and capacity of these carriers must be fixed by the National Government. The difference between your question and any answer I might make is not that, because that is conceded by your question, but it relates to whether or not, after putting upon the Government the duty of establishing this efficient standard, that can be done through private ownership at all or must be done through Government ownership.

Now, my belief is that with the proper system of encouragement to the private owners and assurance to the public of a sympathetic attitude on the part of the Government, that this burden can still be borne by the private owner. I may be mistaken about that; I may be taking counsel entirely of my hopes, but, at least, the suggestion you make is most important. It is entitled to the greatest consideration, but, reverting back to what you have just said in respect to the history of the hearings before the Committee on Interstate and Foreign Commerce of the House on the subject, I was not encouraged to hope, by what transpired there, or what transpired in the Senate committee, for a Government guarantee. I was aware of the general views which are described as having been presented to your committee, but when I commenced to read the bill which you reported out, and which the Senate had under consideration and reported out, it had in it a provision saying that nothing therein contained should be construed as any guarantee on the part of the Government, in any of these matters.

Now that was your answer, and that did not encourage me to expect a Government guarantee.

Mr. SIMS: Well, that amendment to that portion of the

bill—I introduced, I think, one of the first bills on the subject, in which I had nothing on that subject in it——

Mr. THOM: I know you did, and I was very much interested in it.

Mr. SIMS: That very proposition was put up to these distinguished gentlemen before our committee, that if the authorized stock issue on its face should say that the Government should not be responsible, they then said that public sentiment, and the moral aspect of the case with the public would be such as to practically force us, that is, through allowing rates sufficient for the company who had issued these governmentally approved stocks, to pay a reasonable dividend or interest on the stock, regardless of whether that was a part of the law or not; in other words, that the public would afterwards consider it as no part of the law, and not be bound by it.

Mr. THOM: Now, as to my own conception of that, I never entertain the idea that a mere governmental approval of a particular issue of stock involves any guarantee on the part of the Government at all.

Mr. SIMS: I am like you. I did not take that view of it, but the Hadley Commission did take that view, that we should not go further in that direction in connection with stock issues.

Getting down to the point mentioned, the national defense, national defense is not a matter of choice. It is a matter of absolute necessity. Who would think of having our fortifications along the seacoast owned and operated by private interests that depended upon their ability to get enough money to make sufficient fortifications in the competitive markets of the world?

Mr. THOM: Who would think of having their fortifications not controlled by the United States, but controlled by the States in which they were located?

Mr. SIMS: Well, I am not suggesting anything of that sort. I am not responsible for that.

Mr. THOM: But I want to get the two ideas together.

Mr. SIMS: I understand that and am not antagonizing it, but that which ought to be done should not be left with speculative uncertainties. When it comes to whether a man can make money out of private investments, the Government can afford to let him take his risk, but if this Nation is to be defended, and a proper railroad system is a part of it, a part of the national defense, I cannot see how the Government can any more afford to neglect its duty in that respect than in the building of forts, arsenals, etc.

Mr. THOM: That is one of the most important suggestions. and the only question is if the Government can fix such an efficient standard of railroading in times of peace that it can readily be converted into a useful instrument in time of war. That is the problem for you gentlemen to determine.

Mr. SIMS: The ability of the railroad companies to make such further additions to their equipment and such further additional new construction as may be required depends entirely upon the income they get out of investments, and the income depends entirely upon what they may charge the public for the services they may render. The theory of private property, as I get it, is this, that it is not a public utility: that every man has a right lawfully, that is, they say lawfully, to make as much out of this private investment as he can. If a merchant has a capital of ten thousand dollars and can make \$10,000 profit on his capital in competition with other merchants, he is rather commended for it, provided it is in an open, high-minded way, in competition with other merchants, without any advantage. Therefore, the theory of private enterprise is that the private owner should not be unduly hampered; that he should be encouraged by having an open field. On the other hand, the public utilities, such as the life of a nation or city or county depends on, brings us to a situation where it is not a question of how much money the owners of these utilities can make out of them, but how much service the public can get out of

the utility with the least expenditure. Is not that practically the dividing line between them?

Mr. THOM: I am afraid you have invited a deluge. I am afraid you will have to wait a little while.

Mr. SIMS: I will finish my question. The question which I wanted to follow is this: If the development of the railroads in the future depends upon making the investments in railroads as desirable to the private investor as any other private enterprise, how can we know what the future earnings of the railroads will be, what future expenses will be, and how is it possible for them to get money and in such volume as would enable them to make the necessary improvements, and at the same time give the service to the public at the least possible charge for rendering the service, in competition with the entire field of private enterprise,—the entire field of private, unrestricted, unregulated investment?

Mr. THOM: I beg your pardon, Judge. I did not quite catch your question.

Mr. SIMS: I will repeat it.

Mr. THOM: No, let the stenographer read it.

(The stenographer thereupon repeated the question asked by Mr. Sims.)

Mr. THOM: I believe you have got to place safety in investment, instead of hope in investment, when you come to railroads. Of course, there are two great classes of investing public. One is the class that asks for safe investments, and that class accepts a lower return in order to obtain safety. The other class of the investing public is the class that is willing to accept risk in order to obtain higher returns. Now, the railroads of this country were built by the second of those classes, by the class that was willing to accept the risks in the hope of large returns.

The time has come when the large returns cannot be hoped for and your whole system of regulation has got to be to give to the conservative class of investors, the one who wants safety, such attractions of safety as will bring their money

into this industry. I believe it is possible for you to do that. I believe that with a governmental attitude of support for all the legitimate interests of these carriers, that you will so far make an appeal to the investing public, allowing them safety, that you will get such money as you need. At least I think it worthy of the trial before you go into this tremendous revolution, of taking over these properties by the Government and supporting them perhaps from general taxation, because Government ownership will not be as efficient in making net returns as private ownership, and putting a strain upon your system of Government which may make it an absolutism instead of a democracy.

Now, I cannot give you any assurance—nor can any person—looking into the future, as to what will happen in an issue as great as this. Men may speculate about it, and have differing views, but we know something now is happening to the public. We know something is happening now in the way of absolutely menacing the commercial opportunities of the public. They are not properly safeguarded in the matter of transportation. Now, we come together—I am not speaking now of you and me—but the common judgment of the American public—we have come together to deliberate on ways and means of meeting that situation. One way is certain to meet that situation, and that is the Government can come and say that it will take these properties over and that it will guarantee to the public their commercial opportunities.

Mr. SIMS: That is an absolute certainty.

Mr. THOM: That is certain. Now, the consequence of that, however, is that many men of ordinary type quail at the thought of what may happen. Some men may be brave enough to jump into an unknown future, without qualm, but I misread the American public if they are ready to do that with the railroads just yet. They may be driven to it, but the propelling forces have not been evolved to bring them to that point. That is what I think.

Now, what other thing can we consider? The next thing

for us to consider is whether or not there is anything which can be done to make more successful the present system of private ownership, accepting fully the principle of governmental regulation, accepting the policy that the Government has a right to protect the public in this essential—now, what can be done to strengthen that? We think that is a fair subject for consideration, a fair subject for effort and a fair subject, if you will say so, for experiment. I do not know what you would call it. It certainly is a fair thing to be tried, because of the tremendous consequences of any other step. We must remember that your action here is not final; you will stand again vigilant on the lookout for what the public interests will require from time to time. If what you do now is a mere advance, a mere evolution of what you did in 1887, it will be no more final than what you did in 1887, but, in evolving a final policy of wisdom for this country, you will have the benefit of all these efforts to meet the situation, and you will have that before you come to the ultimate decision of the enormous question of a thing that may, and in the opinion of many of us will, seriously alter our system of government. I think that we are here to discuss merely the question of what is wise to do in the step that all of us admit must be taken.

MR. SIMS: Is it wise to undertake to do that which you have not a reasonable probability to be able to do?

MR. THOM: Undoubtedly not.

MR. SIMS: Then the approach of the railroads toward what they want to do and what the public require they should do depends on their future credit, as outlined by yourself and as admitted by all?

MR. THOM: Yes, sir.

MR. SIMS: Your present position makes this credit depend on things that have hereafter got to happen, the railroads must have an increased net earning, either by reducing expenses or by increasing freight rates, increasing the pay they receive, reducing their operating expenses. Now, Mr. Thom,

is it possible for you or me or anybody to know anything certain as to what the operating expenses of a railroad will be in the next twenty or thirty years?

Mr. THOM: It is not possible. We can only guide ourselves in that as we guide ourselves in everything we do, by the best light we have, and try to draw some lessons from the past. I think that we can form a reasonably good idea, enough to justify an effort to strengthen the present system before abandoning it.

Mr. SIMS: And your whole object and purpose then is to make at least one more experiment to avoid public ownership of the railroads of the country?

Mr. THOM: Well, I do not know whether you would say that is my whole object. My view is that would be the wise thing to do.

Mr. SIMS: That it would be better to do it than not?

Mr. THOM: Yes, sir.

Mr. SIMS: Mr. Thom, is it possible for you or this Congress, or anybody else, to know what the labor cost of this service is going to be five years from now or ten years from now?

Mr. THOM: I have just said it is not possible. We can only form some judgment of it just as we could of any other affair of the future.

Mr. SIMS: There is only one power in this Government by which all these conditions may be reasonably controlled and that is the sovereignty of the Government itself?

Mr. THOM: By the Congress of the United States.

Mr. SIMS: Yes, and depending not upon private agency, but upon the public agency. As a matter of principle, Mr. Thom, is there any difference in the Government requiring a railroad now existing, a private instrumentality, to carry 50 pounds of ordinary freight 150 miles at a certain price, than to require the railroad to carry 50 tons of the same class of freight the same distance?

Mr. THOM: The principle is the same.

Mr. SIMS: It is said by the Supreme Court, I believe, or at least upon about as good authority as the Supreme Court, that, "The power to tax is the power to destroy?"

Mr. THOM: But right here I want to register my dissent from the parallel of a charge for a freight service or a passenger service through the power to tax.

Mr. SIMS: I am not assuming that myself.

Mr. THOM: The power to tax is a power of a superior authority to take a toll from those subject to its jurisdiction to carry on a public work. It has no element of being payment for a specific service, whereas the charge of a railroad for carrying a passenger 100 miles, or carrying a ton of freight 100 miles, is simply the power to be reasonably paid for the services performed.

Mr. SIMS: The right to be reasonably paid?

Mr. THOM: Yes, the right to be reasonably paid for the services performed. It is no more a tax on the man who travels 100 miles, or whose ton of freight is carried 100 miles, than my bread man imposes on me when he comes and leaves his loaf of bread at my house and gets his 10 cents for it.

Mr. SIMS: I am not controverting one word you say, and I did not contemplate doing so.

Mr. THOM: I was not answering you; I was answering this talk I hear everywhere, that the power to charge a freight or passenger rate is the power to tax. It is a power simply to be paid; it is a right simply to be paid for a service which is never overpaid.

Mr. SIMS: What I was leading up to, and the only reason I used that expression, "the power to tax is the power to destroy," is not the power, the unlimited power of the Government to regulate private control and ownership of property the power to destroy it commercially?

Mr. THOM: If there was not any Constitution.

Mr. SIMS: Oh, you cannot be confiscatory, but when you destroy the earning power of property have you not virtually

and commercially destroyed the property itself? I mean the profitable earnings?

Mr. THOM: Undoubtedly.

Mr. SIMS: If the Government has the right to say to a railroad you shall carry freight put up in a certain way of a certain class a certain number of miles for a certain compensation, is not that absolutely uncontrolled exercise of an arbitrary power?

Mr. THOM: No, sir. The Government has no right to say they can do that on any terms that are not reasonable. Any terms imposed that are not reasonable are confiscatory.

Mr. SIMS: I do not assume that the Government shall say it shall carry this at a loss to itself. Now, then, as to what reasonable profit is, as to what the reasonable per cent which should go to the companies of carriage, that is a question, of course, that is the hardest matter in the world on which to find two experts in agreement.

Mr. THOM: Right there, I have a thought in my own mind which I want to get in this record. I think a great many of our difficulties have come from the adoption by the Supreme Court of the United States of an erroneous idea in respect to the fixing of rates. I do not mean that it has adopted that view to which I allude finally or exclusively, because sometimes a case comes which is decided one way and sometimes a case comes that is decided another way, and there are two views that they have accepted, two views which are, to my mind, absolutely destructive of each other. One of those views is that the question of confiscation must be determined by whether or not there is a reasonable return on the value of property. The other of those views is that the reasonableness of a rate must be determined by the relation that the rate bears to the service. Now, I believe the latter one is the correct view, and I believe if we had had it started at that point that we never would have had any of this trouble. I believe, in other words, it is the rate paid on a specific service which the railroad gets for that service,

and that the public is not interested at all in the question of return, except as it is interested in the question of facilities. Now, this view was first presented—I cannot say first presented, but was very strikingly presented by Justice Brewer of the Supreme Court in the case of *Cotting vs. Kansas City Stock Yards*, 183 United States, page 95. There the question came up of what was a reasonable rate in the quasi-public business of the stock yards, and with your permission I will read to you from that case, which will indicate the line of view which I wish to present:

“Pursuing this thought we add that the States’ regulation of his charges (he is now referring to the stock yards’ charges) is not to be measured by the aggregate of his profits, determined by the volume of business, but by the question whether or not any particular charge to an individual dealing with him is, considering the service rendered, an unreasonable exaction. In other words, if he has one thousand transactions a day and his charges in each are but a reasonable compensation for the benefit received by the parties dealing with him, such charges do not become unreasonable because by reason of the multitude the aggregate of his profits is large. The question is not how much he makes out of his volume of business, but whether in each particular transaction the charge is an unreasonable exaction for the service rendered. He has a right to do business; he has a right to charge for each separate service that which is reasonable compensation therefor, and the legislature may not deny him such reasonable compensation and may not interfere simply because out of the multitude of his transactions the amount of his profits is large. Such was the rule of the common law even in respect to those engaged in the quasi-public service independent of legislative action. In that action to recover for an excessive charge prior to all legislative action whoever knew of an inquiry as to the amount of the total profits of the party making the charge? Was not the inquiry always limited to the particular charge, and whether that charge was an unreasonable exaction for the services rendered?”

Mr. SIMS: That is the view you endorse, as I understand you?

Mr. THOM: That view I endorse. Now, I want to say here we are met with the necessity, under some decision, of trying to find out whether the rates are reasonable by reference to the value of the property, whether or not the return—in other words, the effort is made to first determine the value of the property and from that to determine the earning capacity of the property. Is there any other property on earth where that is done? You have a warehouse on the corner of 12th and F streets in the city of Washington, and you have another one over here in Anacostia, and they cost exactly the same. Now, the one on F street rents for five times what the one over in Anacostia does. Do you find the value of that F street house by the cost of it? Do you find the value of the unrentable one in Anacostia by the cost of it? What you do universally in trying to find the value of a property, used for commercial purposes, is to first find the income from it and then to ascertain the value from that.

If you want to buy it, you can go to your real estate man, and you would ask him, first, "What income can I expect from this property?" and you would give him not the amount that the property cost, but you would give him what you considered to be the fair valuation of the income you are going to get out of it. Now, if that is so, how counter to everything that is recognized as a commercial and economic law are such transactions as we are undergoing, when we are trying to find the value of the railroad and then from that to deduce its earning capacity.

Mr. SIMS: I did not know my question had involved any such consideration.

Mr. THOM: I ask you to give me an opportunity at this point to get this idea into the record, Judge. I have got a broader view than the mere question, and if it is not unpleasant to you, I would like to indulge in it.

Mr. SIMS: Not at all to me; glad to hear it.

Mr. THOM: Now, we have two railroads, one that runs from the city of New York, through Philadelphia to Pittsburgh; another one built along the crest of the Rocky Mountains, or is built out from the Keys of Florida, towards Cuba, over the water. The cost of those two roads may be exactly the same, or it may be more in the Rocky Mountains or over the water towards Cuba—may be vastly more—but the value of them is entirely different. The value depends upon the neighborhood business; the location of the public for handling business, and when we put ourselves upon the plane of reversing that economic law, we introduce the very situation which has given us all of this trouble today. We are first trying to find values and then to restrict earnings to them. Instead of that, the duty of Government is completely done when you safeguard every transaction that one of the public has with the carrier, and see that that is done at a reasonable rate; and if he has got a million of them instead of a hundred of them every day, that is the advantage that he has, and you have exhausted the whole power of Government when you safeguard each individual transaction. Now, that has been held—there is one line of decisions of the Supreme Court of the United States which goes on that view. Take the case in 148 U. S., where the Government wanted to acquire a dam in the Monongahela River, and the Congress of the United States said that given the power of condemnation, you must not take into consideration the franchise clause; take the physical property. You must not take any franchise. That case went to the Supreme Court of the United States, and there the Supreme Court of the United States said, "This is not brick—the brick and mortar of this dam is not the value these people have. They have got a right to use that, got a right to make money out of it, and we have got to find the value of the dam—lock, I should say; I said dam, I meant the lock. We have got to find the value of that lock, not by reference to what it cost, but by reference to what it can legitimately

earn. So there is one line of decisions going that way. Now, here comes another one which says that the proper standard of judging whether or not a particular rate is or is not confiscatory, is return on the whole property. Now, when we do that, when we accept that second one, we get to the condition where we limit the reasonable and legitimate earning capacity of a road, on transactions each one of which is reasonable. I consider that when I own a railroad—which I wish I did, sometimes; then, again, when I think of the future I wish I did not. If I owned a railroad, my property right justifies me in making out of that railroad every bit of profit I can make, if every one of my transactions is at a reasonable rate. If that were adopted as a principle, then we would not have this trouble here, because all we would have to do would be to let the railroads fix a reasonable rate, and let them earn what they could without oppression to the public in any special transaction, and there would not be this limitation you speak of upon them. Now, the difficulty in that is to fix what is each individual's rate. But the United States Supreme Court, in the North Dakota Coal case, and in the Western Passenger case, have undertaken to say that that is the proper standard. Now, the difficulty of establishment is the difficulty of regulation. It does not affect the substantial constitutional rights, and at the proper time I have got a little article on that subject, that I may ask to be put in the record, but I want to say now, that I believe that that is the fundamental difficulty in our railroad situation, that we have adopted a false principle of determining what these railroads may legitimately do.

Mr. SIMS: Does any of the legislation you propose cover that particular phase of it?

Mr. THOM: It does not, because I consider myself "a voice crying in the wilderness" on that subject.

Mr. SIMS: Are the decisions you refer to in the Supreme Court of the United States the latest decisions on the subject? They are the latest decisions of the Court on this question?

Mr. THOM: There are more, of course, I have not referred to.

Mr. SIMS: The one that you did refer to.

Mr. THOM: They are very late. Then there is also a very late one, and that is the Minnesota Rate case, which takes the other view.

Mr. SIMS: It is the law, as interpreted by the Supreme Court at this time, that a rate is not confiscatory if from all the earnings of the railroad a reasonable profit is made upon the fair value of the property?

Mr. THOM: That is a view which unfortunately they have taken. They are very wise men. You see that that just simply means this, that if five rates were too high and five rates were too low, and the average is right, that that means simply that when the rates that are too low are attacked, the man can reply, "You have got another one here that is too high, and your average is right, and you can put the burden which you have on me on some other man."

Mr. SIMS: Now, upon your theory, of what ought to be the law, or what ought to be the decision of the Supreme Court, but what is not, is that a public-service corporation like a railroad company should have the same right an individual does to have a profit on each separate unit of service performed?

Mr. THOM: I do not think it is a question of profit on each one. I think it is a question of a reasonable rate on each one. It may be a profit or may not. I may so extravagantly operate the railroad that I get no profit on anything. I may so extravagantly build it that I get no profit on anything. I must be content, however, when I go into that business, to get a reasonable return for each charge by comparison with other charges.

Mr. SIMS: For each service?

Mr. THOM: For each service by comparison with other services, and if I make no money out of it that is my fault and my misfortune. If I do make money out of a reason-

able charge, it is to the advantage of my business, to which I am entitled.

MR. SIMS: But your conclusion necessarily involves in the definition of a reasonable charge something more than money out of pocket, does it not, in the performance of service?

MR. THOM: I do not think it does. I do not think you have got a right to simply say that I can put up my cost by bad management and have a profit on that transaction. I think you have got a right to do this: I come to you, Judge, and I employ you as a lawyer and you go into court for me and attend to my case, and we do not say a word about what I shall pay you. Then when you get through, you present me a bill. Now, your bill has got to be what you and I call—what lawyers call a *quantum meruit*. It has got to be a reasonable charge for that service. Now, nobody on earth can say that there is any absolute test of what that is, but the common judgment does fix something that is reasonable for an unagreed service. And this court goes on to state how those things are to be determined; Justice Brewer talks about how that is to be determined.

MR. SIMS: I do not mean that you will claim you are entitled to a profit on a service that you have wastefully and extravagantly performed. I mean, of course, that the service has been done as economically as a good service could be rendered under the circumstances, but your theory is, and your holding is, that when that is complied with, in substance, that then a public-service incorporation is entitled to have a return—in order to be a reasonable return, something in addition to the cost of performing the service?

MR. THOM: Judge, it is impossible to determine what the cost is of any particular service. You cannot determine that. You have got to approach the question of a reasonable charge from a different angle. You have got to judge a great many economic and commercial conditions, and determine what is reasonable under the circumstances.

Mr. SIMS: In other words, it is a complex problem.

Mr. THOM: It is very. There is my difficulty. If I could point a way that was certain and simple to determine what was a reasonable charge for each service, I would have no difficulty in getting it accepted, but the very difficulty of doing that, which I claim does not change the constitutional principle—the very difficulty of doing that has driven the mind of the public into the other conclusion of putting upon railroad property a limitation in respect to its value that absolutely does not apply to any other class of property in the country. You first, in railroad property, determine your value, and from that you determine the reasonableness of your revenue; whereas, in every other class of business, you first say how much this property can legitimately earn and from that determine what the value of it is.

Mr. SIMS: We are getting very far afield on this rate-making problem, and I think we will never get to any end.

Mr. THOM: We are indeed.

The CHAIRMAN: I would suggest, Mr. Thom, that while your discussion of this subject is very interesting, it is likely to take us far afield.

Mr. THOM: It is.

Mr. SIMS: But what is germane, as I understand, is what can the railroads do in the future that the public can profitably endure, that the public may prosper, that commerce may expand, and that the railroads may make such additional improvements as is necessary, in order for them to meet the expanding requirements of commerce, when your whole dependence for credit to enable you to perform this service depends upon a competitive field for credit securities, world-wide, and depending upon the conditions that this Congress cannot prescribe.

Mr. THOM: Now, you have got in your system of regulation to introduce the attraction that will enable the railroads to go into that competitive field and succeed.

Mr. SIMS: Then that involves increased earnings to the railroads over present conditions?

Mr. THOM: It involves an assurance of increased earnings.

Mr. SIMS: An assurance of increased earnings.

Mr. THOM: Now, of course the reason I am guarded in that way is because at the present time we are in what we think an abnormal condition. We have got a standard of earnings created by a war condition, but in a little while that will be all gone. Now, what are we to do to meet that changed situation? My judgment is we have got to have a system of regulation that will be sensitive to those changed conditions and will respond as to those changed conditions:

Mr. SIMS: You admit that rate-making is at present under the law, as decided by the Supreme Court, a very complex and unsatisfactory condition?

Mr. THOM: I do.

Mr. SIMS: And it being that way, how is it possible for you or this committee to know what the rates made in the future will bring in the way of net returns to the railroads?

Mr. THOM: I do not think it necessary—the committee cannot know it, and I do not think this committee is called to pass on it. The committee's entire duty is performed when it perfects a system of administration which it creates, that will deal in the most sensible and fair way with that problem. Now, my whole plea is for perfection of a method. I do not ask you to determine the question here of how much revenue these roads are entitled to, or increase it, or to do anything of that sort. My plea to you is for perfecting a method of dealing with that situation as it arises.

Mr. SIMS: You say there, Mr. Thom—it may be that I have overlooked it or am not capable of discerning it—the propositions you have made do not seem to me to eliminate the wastefulness of competition at competitive points, the present system of the railroads. Now, you speak in high terms, no doubt correctly, about the condition of the country served by the consolidation of the 149 railroads now composing the Pennsylvania system; also the consolidation of numerous roads now composing the Southern system, and

these systems are built up in that way, all over the country, but as systems they have competitive points and a competitive service to render, in which it seems to me that the competitive methods adopted are absolutely wasteful. Now, your proposition which you put forth, if I have understood you correctly, does not provide for the elimination of wasteful competition practiced between the several systems, and when you get your regions established, which this extra member of the Commission is to look over, if 149 railroads combined in one better serve the country they cover than a lesser combination, and if your national incorporation is intended to force all of these railroads to take out national charters and then make your working arrangements or combinations afterwards, for the life of me I cannot see, if a railroad company owning and operating 149 railroads with great benefit to the country and to the stockholders—I cannot see why that same identical railroad should not own every railroad in the United States and should not operate them all with reference to the public interest, and not simply to a section served by it.

MR. THOM: Now, Judge, the difficulty about that is that you are up against the fact that you do not. How are they to acquire all these other railroads? You have to deal with the situation as it is. You are trying to improve that situation as it is by making improvements. Now, you complain of certain private practices that are wasteful. Don't you imagine that these responsible railroad men who find their limitations of initiative narrowed by having no control, to speak of, over their revenues and expenses, are giving this matter great thought? These men are studying every day how they can eliminate competition and other wastes. If you do not believe that they are doing so, I should like for you to come and sit in one of their offices and see how earnestly they are giving attention to that very matter.

MR. SIMS: I have no doubt of it, but that does not remove the fact that now stares us in the face, that here you have

two railroads in sight of each other, all the way, paralleling each other, from here to the City of Philadelphia, and from there to the City of New York, doing an immense business with double terminals, double bridges, double rights of way and double expenses all along. Is not that an economic folly, to continue that kind of thing through all time to come?

Mr. THOM: Let us see. In the first place, let me call attention to the fact that that is a situation that now exists, and we have to deal with it, whether it is good or bad. Now, as to the future, our proposal is that there shall not be any more railroad construction of a mere competitive nature, unless approved by the Interstate Commerce Commission. There has to be a certificate of public necessity for the construction of railroads under the view we hope to present; that before a railroad can be built, that must be done.

Now, in Germany, they have adopted an entirely different theory from America. Here, in America, we have had the idea, up to now, that the wise policy is to get just as many competitive railroads as we can, and there are prohibitions in some constitutions to prevent the refusal of charters to competitive railroads, or something of that sort. Now, in Germany, they have a governmental principle that will not let a railroad be paralleled within a certain distance, because they think it better to have one good railroad than two poor ones dividing the business.

A VOICE: But they own the railroads.

Mr. THOM: Yes, they own the railroads. That may be a wise policy, but we have grown up in a haphazard manner in this country with respect to our railroads. We cannot undo what has been done. You and I may think we have an unnecessary railroad, but it is there. What are we to do with that? We have to deal with that as an existing fact. We can safeguard the future, but we cannot change the past without most hurtful consequences.

Now, you speak of these two railroads. I am not acquainted with those situations any more than you are, but I will

say this—this occurs to me—that there is the Baltimore & Ohio that serves a vastly different public from the Pennsylvania Railroad.

Mr. SIMS: Between here and Philadelphia and New York?

Mr. THOM: No, at other points.

Mr. SIMS: That is what I am talking about.

Mr. THOM: Is it to the interest of the vast public that the Baltimore & Ohio serves, and the Pennsylvania does not serve, to get directly into the markets of Philadelphia and New York—are we justified in considering merely the distance between Washington and New York in considering this problem, or must we go out to the whole section of Pennsylvania that the Baltimore & Ohio serves, to determine whether that vast public has an interest in getting directly over the same railroad into those markets. Now, there may be a difference of opinion about that, but those are the things that the men who built the road determined in favor of when they built the roads, and my proposition is that you and I cannot go and tear up those roads. They have got to continue. We have got to deal with a situation, good or bad, such as has been created.

Mr. SIMS: Is it not economically sound to double-track a road rather than build two separate railroads, having separate terminals and separate bridges, etc.?

Mr. THOM: If a double-track will serve the same community.

Mr. SIMS: I mean the same community.

Mr. THOM: Undoubtedly.

Mr. SIMS: We want to guard against such things in the future.

Mr. THOM: Yes, sir; and the proposition we have presented to you is one we would present as a means of carrying out that very idea. In other words, when there is a possibility, under the Federal law of incorporation, to incorporate a new railroad, there must be, in our judgment, an application made to the Interstate Commerce Commission, for a

certificate of necessity—public necessity—and the Interstate Commerce Commission must pass upon that question favorably before a charter can be issued.

MR. SIMS: Now, then, Mr. Thom, seriously, do you think the American public will ever agree to vest in the hands of a single board the question of whether they shall have or shall not have a single railroad or two railroads?

MR. THOM: But that must be determined by somebody.

MR. SIMS: Yes, sir; that is a practical question.

MR. THOM: Who will determine it? We supposed the creature of Congress would determine it.

MR. SIMS: Would the great, imperial State of Texas ever agree to a situation where her domain, which is larger than Germany, should depend on a board sitting in Washington as to whether a railroad should or should not be built there?

MR. THOM: Why should it not? Does not that board represent Texas? Is there any doubt that if there is any semblance of necessity that the Commission will be more responsive to the sentiment in Texas than to the railroads?

MR. SIMS: I am supposing this to be a competitive railroad, to be privately owned.

MR. THOM: I am, too. But ought not anybody, no matter where he is, feel perfectly safe, in filing application with the Interstate Commerce Commission, the independent body that represents every interest in this Union, that it will not prevent the building of a railroad except it is a mere frivolous pretext to break down some other?

MR. SIMS: I assume that it would be very safe to rely on.

MR. THOM: And that the Empire State of Texas would have just as many railroads as they could get anybody to build, where there was a reasonable excuse for the building of them.

MR. SIMS: The State of Texas has the right, as a State, to build railroads there itself, in Texas.

MR. THOM: Undoubtedly. They could build their own railroads if they wanted to.

Mr. SIMS: But you do admit, under private ownership, there has been an unnecessary and wasteful expenditure of capital, by building excessive railroad facilities, unnecessarily, and more than was needed in some sections of the country, to the deprivation of other sections of the country, not having what they actually do need, because the investors have to make an earning on the investments as they are?

Mr. THOM: You say I admit that. I do not know that I have admitted that. I do not think my study of the situation—this particular situation—would justify me in admitting that. I have admitted the possibility of that. I do not know myself, where there is an unnecessary railroad built in this country.

Mr. SIMS: You do not think we need two from here to Baltimore?

Mr. THOM: I think so.

Mr. SIMS: What is the reason the same railroad could not have six or eight tracks, or a dozen, and still be cheaper than two separately operated entities?

Mr. THOM: We have considered that question. Here is a situation of this sort. There is the Baltimore & Ohio Railroad, running from the city of Baltimore to the West. It ran long before the Pennsylvania Railroad came through Baltimore. Now, was it not to the public interest that the Pennsylvania system should also come to Washington?

Mr. SIMS: Oh, as a matter of course, I am not questioning the advisability of doing what was then done.

Mr. THOM: It looks like the public was benefited.

Mr. SIMS: But the public is compelled to stand a rate for all time, to cover services which would not cost so high if this railroad-building had been done economically.

Mr. THOM: Do you know, Judge, that it costs less to come from Baltimore to here than it does to take a taxicab from here up town? I do not think——

Mr. SIMS: That is so, but I do not think that makes any difference.

Mr. THOM: I do not think the cost is excessive.

Mr. SIMS: The public has a right to have that service performed at the lowest cost of performing the service. Now, the only reason why private companies are tolerated at all, as I understand it, to perform a governmental function, is that they will perform it and yet make a profit, and upon the whole give the service cheaper than the Government would give it if it was performing the service itself—as cheap and as efficient. Some contend much more efficient. But is not that an implied necessary condition or assumption, that when a private individual or a corporation does for the public that which it can do for itself, that it must be done beneficially to the public, and at the same time, if they can make an earning or profit, well and good?

Mr. THOM: They must do it on terms beneficial to the public, undoubtedly, but you must take the whole field, as to what is beneficial to the public, and that is not determined by simply the scale of rates.

Mr. SIMS: Now, Mr. Thom, is it not sound to say that unless private ownership, as a principle and as a policy, can serve the whole country as efficiently and as cheaply as the country can serve itself through its own facilities, that it is not entitled to perform that service?

Mr. THOM: No, sir; I think there may be other considerations that may control the matter of whether it should be private or governmental ownership.

Mr. SIMS: Then you do not think that the Government has the right to supply its own facilities for its own purposes; for the public interest to serve the public interest in any such way as will give the public the greatest amount of service at the lowest amount of expenditure?

Mr. THOM: I do believe in its right, but the question is as to the wisdom of exercising it. I admit it has a perfect right to do it.

Mr. SIMS: Are we going to assume that the Government of the United States is not as able and as willing to do for its people what the government of any other country has done or is doing for its people?

Mr. THOM: I do not know, Judge, what you are going to assume on that subject. I think there is a vast difference, speaking personally, as to what we ought to assume in regard to one form of government, and what we ought to assume in regard to another form of government. I think that there are certain forms of government where the principle of liberty is made dominant over the theory of efficiency. I think there are other forms of government where the principle of efficiency is made dominant over the principle of individual liberty. What one of those governments may do in a great matter affecting an efficient form of government, and what the other form of government may do may rest upon very different principles, and the success of it must be measured by the different governmental systems which authorize it.

Mr. SIMS: You think that the individual liberty of the citizen has ever been affected by the government function of performing the entire transportation service carried on by the Post Office Department?

Mr. THOM: I think, Judge, that of course there has not been, but when you extend that principle to the ownership of every railroad in the country, and increase your army of governmental employes to the extent you will, and put upon the officers of the Government the responsibility for this transportation system, that you will be dealing with a very different problem than any which any democracy ever dealt with before. Now, as I have said to you, time and sufficient experiments may prove that that is the only way we have got, speaking for myself alone—I do not think the time has come for us to accept that as a final proposition. I believe that some other way of dealing with this immense problem exists than the way suggested by your question.

Mr. SIMS: But the some other way would naturally include that which is to the best interests of the country, taken as a whole.

Mr. THOM: Undoubtedly.

Mr. SIMS: And should develop every part of the country, instead of sections only?

Mr. THOM: Undoubtedly.

Mr. SIMS: Now, if private enterprise, through the earnings of the railroads, and under the complex control that now exists, cannot secure the necessary funds with which to perform this service, and to give to the people of this country that which their own Government, you admit, can give, are we going to be hampered forever, and never have a complete and perfect transportation system in this country, if it is left subject to the control of private interests, private employes or private employers——

Mr. THOM: You ought not. The minute that private ownership breaks down, the Government ought to step in.

Mr. SIMS: Has it not broken down?

Mr. THOM: I do not think it has finally broken down.

Mr. SIMS: You think it is breaking?

Mr. THOM: I think unless you improve conditions it will break down.

Mr. SIMS: Now, then, you cannot promise us, though, anything more than the mere further experiment with private ownership?

Mr. THOM: I think, so far as I am concerned, my judgment would be we could succeed with proper help from the Government.

Mr. SIMS: As I understand you, as representing practically all the railroad properties in the country, they are not ready to sell their holdings for a fair valuation?

Mr. THOM: We have never discussed that. I did not come to speak for them on that subject.

Mr. SIMS: I understood you to say that some of the railroad people were in favor of Government ownership.

Mr. THOM: Some railroad people take this view——

Mr. SIMS: And that a majority was opposed.

Mr. THOM: Some take this view, that with an inability to control their revenues and with the demonstrated inability of controlling their expenses, there is nothing left but for them to take some money and have the governmental agen-

cies manage them. Some of them are pessimistic and some are hopeful. The majority are hopeful and expect proper results from improved regulations.

Mr. SIMS: And so they are not willing to sell their property for a fair valuation?

Mr. THOM: I do not know that I can say that. If you come around and offer a fair value I expect you will find more willing to give it to you than you think. But I do not know, you are asking me to discuss a question now which I have not discussed with them. You, of course, realize that if I have not discussed the particular phase of the matter that you are now alluding to that I can not speak as to their views, but I say generally that I have discussed it enough to know that some of them feel differently about public-ownership than others. Some feel very pessimistic; others feel less so.

Mr. SIMS: But in view of the fact that your argument, and I am not contending that your argument is not a correct one, but the position taken by these railroad companies whom you represent is that without legislation, or something that will do equally as good, that Government ownership is inevitable. Now then it is strange to me that these companies do not contemplate that which they think may arise at a reasonably early day, because they do not know, I do not know and you do not know what will be the result of passing every law that you are asking for, if every one was passed just as you have suggested them, you do not know and I do not know and nobody else knows what the effect on the railroads will be for the future, as to whether or not investments in those roads will be so attractive as to compete with all other markets for capital. Therefore not knowing, and you can not possibly know that it will be a success, therefore your next step must come,—Government ownership. Why should not these lines, these owners of these properties, contemplate that contingency?

Mr. THOM: I have not said they did not contemplate it.

I say on that subject that I am not entitled to express a view.

Mr. SIMS: You mean you are not authorized to express a view?

Mr. THOM: Not only am I not authorized to express a view, but I am not acquainted with the views of these managers, but they are in this attitude of mind. Here they have become committed to vast expenditures in the way of furnishing facilities to the public. They have assumed vast responsibilities in respect to the public service. They believe that the time has come for their hands to be upheld by sympathetic and helpful public regulations in order that they may adequately perform their duties, and they expect, under perfect regulations, to be able to do that. Now, when the time comes that all these apprehensions that you are talking about are realized, then your power remains as it is now in respect to any further change.

Mr. SIMS: But if the Government is going to undertake the experiment of Government ownership why defer the evil day, if it should be so denominated?

Mr. THOM: If you so determine. We do not think the time has come. That is one thing you are to determine.

Mr. SIMS: Speaking for myself individually and not pretending to bind anybody but yourself, I think that with the potential control to the extent that it is lawful and has been and can be exercised by the several States, with the potential control that has been immediately exercised by the Congress of the United States, that you can come just to the question of the successful operation of the transportation business of this country as a private company could run the post office business of this county under similar conditions.

Mr. THOM: You do not think it is possible?

Mr. SIMS: Not possible in the sense of being the best that can be done.

Mr. THOM: I will agree with you that it is not. Now, we bring before you our best thought as to how to meet that situation. Of course we will be immensely benefited and the

public will be immensely benefited by any suggestion of a better course.

Mr. SIMS: You speak of practical things in a practical way and a practical view, and I think you are right about it. Now, stating just in a practical way, I will give you my own personal judgment. The people settle these things through their power to vote, through the elective franchise, through the exercise of it, and at this time I think it would be as utterly impossible to take from the State railway commissions the powers that they now exercise, waiving all question as to whether they are beneficially exercised or not, and lodge them in a single Federal body of control. I think it is practically, politically impossible. And with forty-eight potential regulators of commerce, rate-fixers, and then with the forty-ninth asserting its power over all, and all the issues of credit instruments in the future to depend upon that, I cannot see how you expect much better results in the future than we have had in the past. Believing that it is practically impossible to centralize Federal control, I think that the second proposition, national incorporation, will be fought to the bitter end by those who do the voting.

You perhaps have never been a candidate before the people for office and do not know just how a man feels. It is always very easy to talk about a man having moral courage, but until a man has been tested he does not know what he will do, in my observation. We passed a rural credit law here in which we adopted 50 per cent of the land value of a piece of land; in other words, if a man wanted to borrow he must not borrow exceeding 50 per cent of the value, and not to exceed 20 per cent of the insured improvements. I went out in my district thinking I had a splendid thing to present to the people, and my opponent, who ran against me, said that anything less than 80 per cent of the entire value was an absolute failure and a denial of justice to the poor tenant farmers of the country, and enough of them took his view of it to come very nearly defeating your humble servant.

Mr. THOM: But they did not?

Mr. SIMS: They did not do it, but I do not know what the other experiment will do.

Mr. THOM: What did you think of that argument, Judge?

Mr. SIMS: I thought it was not economically sound and would lead to a speculative increase in the values of land, and all that sort of thing. I made that argument, but the man who had \$200 in money and wanted to borrow \$800 to buy a piece of land costing \$1,000, paid no attention to my argument. He was after practical results.

Mr. THOM: Is it desirable that the matter of these great facilities, on which the public is dependent, should be made the football of arguments like that?

Mr. SIMS: It is not desirable, but the question, like the one you spoke of, is, is it practical to do it?

Mr. THOM: Let me see if I understand you. You say it is not possible for the United States Government to act on behalf of all the States?

Mr. SIMS: No, I do not say that; I say it is practically impossible to get the States to consent to this kind of a law.

Mr. THOM: To consent that the United States shall act on behalf of all of them, but to say, moreover, unless they do that, we have come to an impossible situation in respect to transportation, and your proposal is——

Mr. SIMS: The inevitable——

Mr. THOM: Your proposal is for Government ownership?

Mr. SIMS: I do not propose it.

Mr. THOM: But in your question that is your other suggestion. Now, what will become of these State governments that you allude to when you get Government ownership?

Mr. SIMS: They will not exist.

Mr. THOM: Therefore there is no difference between your suggestion and mine, so far as they are concerned.

Mr. SIMS: There is a very great deal of difference.

Mr. THOM: No, sir; in either event the authority of the State over these transportation facilities will disappear and be merged in the National Government that acts on behalf of all the States.

Mr. SIMS: They will be publicly owned and publicly operated, and then they will believe that this operation is performed with reference to equality among the people who receive the service, with privately owned agencies, that do not believe it.

Mr. THOM: Why should there be any greater confidence in that when the Government owns it or when the Government regulates it?

Mr. SIMS: Simply because the Government has greater power of control and regulation than such agencies.

Mr. THOM: There is only this difference between you and me, the tendency of your questions and the purport of my answers, and that is I am asking that there should be a regulation on the part of the National Government in behalf of all the States, and you are asking that there shall be an ownership of all these properties by the United States in behalf of all the States, and in both events the authority of the local body to deal with these questions will be taken away, only it will be taken away much more under what you advocate than under what I advocate. Is not that a fair statement of it?

Mr. SIMS: Answering you off-hand, it seems to me to be a fact that absolute ownership is more inclusive than regulation by that authority.

Mr. THOM: So the difference between you and me is not one of whether or not the States have continued to determine the standards of these agencies of commerce, but you think it ought to be to a greater extent in the hands of the National Government than I think?

Mr. SIMS: You are admitting, if I understand it, and I do not mean in terms, but that is the tendency of your entire argument, that present conditions cannot continue in justice to the public?

Mr. THOM: You and I both agree on that.

Mr. SIMS: We agree on that. Now, then, you present a suggestion which I think is practically impossible.

Mr. THOM: Exactly. You present another one which is a greater denial to the States than I do.

Mr. SIMS: No, I do not present a suggestion at all. You, yourself, have suggested that in the absence of the success of the solution you propose Government ownership is inevitable.

Mr. THOM: And you say not only that, but you judge that what I propose is not worth anything to start with and that we should go to Government ownership now.

Mr. SIMS: No, I do not say it is not worth anything; I just say I am afraid, and very much afraid; in fact I do not believe for a moment we can pass the laws you say are necessary against Government ownership.

Mr. THOM: You interpret, then, what I say into a failure; you do not go back to a condition which you say is impossible, but you go forward to Government ownership, where every right of the State disappears.

Mr. SIMS: Remember I am not making this argument in favor of State commissions; I am simply presenting to you a situation. It is not what we want to do, but what we can do. If it is practically impossible it may just as well be physically impossible.

Mr. THOM: Judge Sims, I have profound faith that when the people of the United States understand that this thing is done in the interest of assuring them the commercial facilities which are essential that they are going to approve it, and if I were a candidate for office I would not object at all to going before the people on that issue. I have been a candidate for office. You are mistaken in assuming that I have not.

Mr. SIMS: I did not know it. You know then how to sympathize with us?

Mr. THOM: I was not only a candidate for office, but I was elected. I was made a member of the constitutional convention of Virginia and the man who attacked me was an eminent lawyer of my city, and he attacked me just along

the lines you are talking about, and I did not run, I came out and I met the issue and I beat him in every precinct in my city.

Mr. SIMS: Why did you not keep on running?

Mr. THOM: I did not have to. I got there.

Mr. SIMS: But for other offices? Why are you not in office now? You would be a valuable man in Congress.

Mr. THOM: I never was in Congress.

Mr. SIMS: We agree, Mr. Thom, that a situation exists that calls for relief, and that without relief progress is paralyzed.

Mr. THOM: You and I agree on that; the only thing is you want to take away more from the States than I do.

Mr. SIMS: I am not talking about taking away from the States, I am talking about whether the States will let us or not. They control, not we. When you admit that not over 1,000 miles of railroads were built in this Nation last year, you admit one of the saddest facts that it appears to me can possibly confront us. If that is not absolute arrest of development I do not know what it takes to constitute it, because nobody can claim for one moment that there was not a real, pressing necessity for a larger construction than 1,000 miles, and last year was a profitable year to the industries of this country.

Mr. THOM: The saddest fact, and one that is so large, which should not be brushed aside and that we should do that which will not further continue this state of national industrial commercial paralysis. But whether you are going to get it done by increasing the cost of the service to those already receiving it, and make it less beneficial to those who may hereafter receive it, I cannot see that that can be done. I cannot see that it is going to be possible to pass a national corporation act—that it is possible to pass an act that is going to deprive the State commissions substantially of the authority they are now exercising, and I cannot see how we are going to get concrete results in sufficient amount and suffi-

ciently comprehensive, that the propositions of the railway executives present, to enact the legislation that they propose, or anything that would be substantially the same, and, therefore, not believing that that is possible—and I may be mistaken—then next year we are to have less than 1,000 miles of railroad built in the country, a country of this vast domain which needs so much, and which needs perhaps every trunk line in the United States doubled—I mean its trackage doubled, its facilities doubled. If you can present a gloomier picture than that, I do not know what it is going to be.

Mr. SIMS: The whole theory as to what effect it will have politically, as to whether a member of Congress will appoint an engineer—and I am surprised that the great president of a great railroad system of this country thinks that we are so limited in our discharge of executive duties, that the appointment of an engineer or a conductor on a railroad, if Government owned, would be left to the political interests of a Senator or Representative in Congress—if that is a fact, and it would come down to that, then we need a new form of government faster than we need a new system of railroad regulation. Now, believing, as I do, that we have reached this state of arrested development, and believing as I do that we cannot live under it and continue to prosper, it is not a question about what we want or I want. What can we get that relieves the situation, either the legislation which you are proposing, substantially complete, or such government guarantee as to the future issues of securities so that you will find they can withstand competition of other governments, which, according to the letter you have just read, may become very acute after this war is over, which will enable along the lines of private ownership, with Federal control, to furnish the country what it has, or whether or not we shall have to go to Government ownership, either directly or indirectly, through stock ownership of present corporations sufficient to control them, or through an absolute ownership of the properties? Now, we are up against a great

big question, as I see it, and one that I cannot treat frivolously, and I am afraid that I am absolutely incompetent to treat it from the best interests of the country. I mean in speaking individually for myself, and, therefore, I want information of every kind, and I hope that the railway executives and the owners of stocks and bonds will be heard before this committee with reference to the inevitable, provided the present scheme of legislation should fail.

MR. THOM: That is very earnestly to be hoped, and it will be gratified by their coming. Now, what you said interests me greatly. As I understand, your proposition is this, that the idea of increased regulation by the National Government, up to the point we suggest, is impracticable, because people won't have it, but you propose to go before the people and to say to them that the present condition is an impossible one. Here in a country, not yet developed, not yet approaching the point of entire, complete satisfactory development, the present system has brought about what is practically an arrested railroad extension. Not more than a thousand miles of railroad has been built in this whole country during the last year. Now, that is the situation that shows that the present conditions are unbearable—that the present condition must necessarily fail. Now, I know that you people are not ready to let the Federal Government regulate to a greater extent than they do now, because it will interfere with some of your own powers of regulation. I know that, but my remedy is for the Federal Government to own these properties entirely, and to deprive you of any voice in your local capacity in respect to it, and I ask you to adopt that. Now, where would you get with such an argument? Don't it destroy itself?

MR. SIMS: Well, I would have to cite a rural route in a community where the Government is performing transportation service, most satisfactory to the people who receive it, without any local control whatever.

MR. THOM: When you do that, are you not arguing in

favor of increased Government regulation, as much as in favor of Government ownership?

MR. SIMS: I say that there is a concrete fact. The Government is today delivering package freight, all over the country, through Government agencies, to the absolute satisfaction of people who are receiving the service.

MR. THOM: I do not believe that the people of this country will ever accept an argument which is based upon the fear of disturbing their control of these agencies of commerce, and present as a substitute for that, excluding them from the entire field of any possibility of exercising any local control, and I think you have got to go with your proposition, and that is where I think you will succeed. What this country needs is improved and increased commercial facilities and the assurance of every adequacy in all the future. That is what the country needs. Now, it is time for us to take counsel together as to how that is to be obtained. You realize that you would not yourself go into these matters if you were subjected to the varying policies of forty-eight different governmental bodies. Now, that cannot stand. Which shall we have as a substitute for it, Government regulation or Government ownership? In either of them, this divided responsibility and this divided power ceases. Now, which shall we take? Do we want to go to Government ownership, or do we want to go to improved and increased Government regulation? Now, it is a fair argument. I do not think there is a doubt as to what the people would say now. It may be that something will happen in the future to show that the experiment of improved regulation will break down and that the other is inevitable, but I do not believe the American people are going to be content to take the step of Government ownership now.

MR. SIMS: We all assume to be afraid to allude to a certain matter—not afraid, but rather not discreet to do so, and I won't ask you to do it at all, but the exercise of franchise controls this country? No question about that?

MR. THOM: Undoubtedly.

Mr. SIMS: Now, as between private, individual ownership and public Government facility and direct Government ownership, which is most liable to be involved in these interminable labor troubles and disputes? So far as I know, wherever the Government has done anything—I mean wherever the Government has pursued any line of industry, the Government has had absolutely no trouble with this interminable contest between labor and capital, and how can you operate the railroads of this country and not know what the demands of labor are going to be?

Mr. THOM: I think that that is a matter that the Government can control, Judge.

Mr. SIMS: It controls through Congress?

Mr. THOM: Yes.

Mr. SIMS: And Congress is controlled by the exercise of the elective franchise, so do you know what sort of a Congress you will have four years from now?

Mr. THOM: We can only hope.

Mr. SIMS: But the Government itself, wherever it does own anything, operates it just the same way, regardless of a change in Government control. Now, I know this bugaboo about making politicians of all the employees of a railroad company is just about as substantial as making politicians of employees who carry the mails on your streets—just about as substantial and about as reasonable.

Mr. THOM: Judge, we cannot accept the proposition that notwithstanding the fact that the franchise controls the views of our public men, that it is going—either the views of the public or the views of our public men are going to be inadequate to deal with any situation that arises. If so, our system of government breaks down. Now, I am basing everything that I say upon the supposition that our system of government is possible; that while Congress may go wrong for a time, or while any public body may go wrong for a time, that ultimately it is coming to a sound and an honest view of every question. I think that that must be the re-

liance on the part of the American public, if it is going to believe in and be content with its own Government, and that their leaders must, in the end, arrive at a sound conception of what the public needs are and make the proper legislation to get them.

Mr. SIMS: We have been generalizing. I want to ask you a few questions along your propositions which you have already fully explained; but under your system of compulsory incorporation—I believe perhaps someone did ask that question—I am not sure now—could you compel a railroad, owned by a corporation within the State, in which the railroad is being operated, say, Texas, for instance—say you have a Texas corporation that owns a thousand miles of railroad, all within the State of Texas. Could you force that railroad company to take out a national charter, simply because it, in connection with other roads, delivers to patrons on its route, freight coming from some other State or going to some other State?

Mr. THOM: Yes, sir.

Mr. SIMS: In other words, you think that if they do that business, they must do it in the way the Government says it must be done?

Mr. THOM: The test is not the location of a physical property. The test is the character of business in which the road engages. Now, if the road that you speak of, being entirely within one State, wants to do business within that State and not carry any traffic in interstate commerce, it would have a perfect right to do so, and the United States Government would have no right to disturb it, but if it wants to engage in interstate business, wants to carry traffic which is interstate traffic, then this Government can say that unless you take out a Federal license or a Federal charter of incorporation you cannot continue to do it.

Mr. SIMS: Now, then, take a great State like the State of Texas, being 67,000 square miles larger than the German Empire—

Mr. THOM: Why use Texas all the time? Take some little State.

Mr. SIMS: It illustrates what I am speaking about. Could not a Texas railroad corporation build a system of roads, one termini at El Paso, one at some eastern town in the State of Texas, one at a northern town, another one at the Gulf somewhere—could they not do all of the business they wanted to, to the end of their terminals, and not take a bill of lading or anything else to go beyond the State, and yet some other road, an interstate road, pick it up at the end of that line and carry it on wherever it wants to?

Mr. THOM: Not without its being still interstate commerce. The Supreme Court of the United States has held—which I am sure your judgment as a lawyer will endorse—that through no form of handling business can the intrinsic character of the traffic be changed, and if the traffic was really an interstate shipment it is not prevented in being an interstate shipment by where your billing starts and your billing ends, but it is the real nature of the transaction itself.

Mr. SIMS: Well, now, I admit that. I understand it; I mean I understand the decision.

Mr. THOM: And, therefore, to answer categorically your question about the device of billing to the end of a road, interstate traffic, the road could not violate the laws of the country.

Mr. SIMS: Well, now, let us see whether it could not. Here is a firm doing business in El Paso. Here is a firm doing business, not in Shreveport, but in the nearest Texas town, Texarkana. That illustrates very well. Now, this firm here is doing business. It is buying and selling, and the El Paso firm is buying large amounts of Texas property, for which California has a demand and furnishes the field. Now, that firm can buy all of the Texas property it wants to, have it shipped to El Paso and stopped; then it can re-

sell to a California purchaser, can it not? A man comes there and buys it and wants to ship it to California.

Mr. THOM: The question is, what was the transaction from the beginning? If it is a device to change interstate traffic into intrastate traffic, it cannot succeed. If it is a fact that it was honestly intrastate traffic up to the time of being delivered at the ultimate destination in the State, then that could be done; that could be done, because then that would be simply intrastate traffic, honestly intrastate traffic, but if that is a course of business, intended as a device, it can never succeed at law, nor can it succeed as a practical matter, because there will be some other road that will come along and take that property, without breaking bulk, and carry it very much quicker to destination in another State, and there will be no chance of this broken shipment and reshipment transaction succeeding in competition with the other.

Mr. SIMS: Now, then, another question: I am leading up to one, the reason I am asking these preliminary questions. Now, then, you have a great cotton warehouse purchaser and dealer in cotton at Texarkana, in Texas. He buys thousands and hundreds of thousands of bales of cotton in the State of Texas, shipped on a Texas railway, intrastate railway, which terminates at Texarkana. He has got that cotton to sell, say to Philadelphia purchasers, and Boston purchasers, and other purchasers buy that cotton of him, and he ships it straight on. That is all in perfect good faith. Why can he not do that?

Mr. THOM: Because there is a vast bulk of that railroad traffic that could not be handled in that way, and for that purpose of evading the effect of the laws of the land, and that railroad would not for a minute stay out of the national system of incorporation, because it would be sacrificing its facilities and its opportunities of doing business.

Mr. SIMS: Now, we are coming to the question——

Senator UNDERWOOD: Mr. Chairman, will Mr. Sims allow

me to ask a question a moment—not ask it of him. I want to ask the committee—I have got an appointment and must leave in a few minutes—I want to ask if it is the purpose of the committee to meet tomorrow.

The CHAIRMAN: I have canvassed the committee and find that the impression is against meeting tomorrow. There will be a recess until Friday at half-past ten.

Mr. SIMS: Now, the State of Texas makes four million bales of cotton, upon the average, every year. Perhaps it will make ten millions some day. Now, the average cost of railway construction, maintenance, and operation in the State of Texas is so much less than the average cost of railway construction, maintenance, and operation in Boston and New York, as to enable a Texas railroad to perform the biggest part of that haul economically and profitably, at much less than the through rate would have to be, if the through rate was based upon the reasonableness of a rate that these other States would have to charge. Therefore, there would be a burden placed upon the State of Texas, or its industry, by national incorporation, provided a rate could then be put upon the producer of the cotton in Texas for the proportion of the haul in Texas, that exceeded what the pro rata part of such a service would be, if confined to Texas. So that a system of rate-making that would put a rate from Boston to Galveston, or to El Paso, or to San Antonio, that would be a reasonable and fair rate for the entire service, but for the Texas part of it would exceed what it would be if done by a Texas corporation—why is not the interest of the State of Texas to encourage a system of State railways, built wholly within the State, to carry away those products, not destined within the State, to a border market, so as to escape the additional cost of transportation over several hundred miles, that would be added provided they had to pay the average through rate?

Mr. THOM: Judge, how many railroads in Texas are in bankruptcy today?

Mr. SIMS: I do not know.

Mr. THOM: Are they all, pretty nearly——

Mr. SIMS: I do not know. I do not see that that has anything to do with the question I have asked.

Mr. THOM: I think so.

Mr. SIMS: I assume that the railroads in Texas can do it cheaper than the average haul to the average destination of the cotton.

Mr. THOM: Yes, sir.

Mr. SIMS: I assume they can do a profitable business for a less rate than the average through rate.

Mr. THOM: You have assumed that in reference to interstate shipments, have you not?

Mr. SIMS: I have assumed that with reference to a product which will ultimately be used or consumed in another State.

Mr. THOM: The real purpose is to accommodate an interstate movement, or what is practically an interstate movement?

Mr. SIMS: Oh, no; it is the purpose to enable people to grow cotton in Texas, to have a freight rate through Texas that is reasonable, just and fair, and profitable, for the Texas haul.

Mr. THOM: No, now, the real destination of that commodity is in another State, or in a foreign country.

Mr. SIMS: Well, that is, a greater portion of it would be, naturally.

Mr. THOM: That is what I say. Now, if Texas, and if each State can, on such a haul as that, divide up, according to its local condition, you have State regulation instead of United States' Government regulation of a commerce that is distinctly interstate. Is that right? What is the meaning of a State line for interstate commerce? Didn't every State, when it came into the Union, agree that there should not be any such thing as State lines, so far as commerce passing beyond is concerned, and what possible justification is there for dividing those territories now, by State lines, and trying

to fix rates by State lines? You destroy the very constitutional system on which equality among all the people is dependent. Then, on your suggestion, this Texas commodity would have to pay perhaps a lesser rate in Texas, on your assumption, but then they would make that up in a subsequent part of this movement, where it had to pay a greater rate than it does now.

MR. SIMS: You mean for incoming commerce?

MR. THOM: No, sir; for that matter, when you take your Texas shipment and later go out of Texas, up to Chicago, then, you say, in Texas it has a very cheaply built road and ought to have a low rate, but that commodity, when it gets out of Texas, goes on a road more expensively built, and according to your theory, it ought to have a higher rate. Now, taking the shipment through to the final destination, it would be part of the way on a very cheap rate, and the balance of the way on a much higher rate, but the result to the commodity would be the same. Now, why divide that by State lines and not in accordance with the way the shipment actually moves from a State point to a point in another State?

MR. SIMS: Judge, the policy, as given forth by the Texas Commission, I believe, is that they were trying to develop Texas business.

MR. THOM: Is that a constitutional purpose?

MR. SIMS: Now, let me ask this question: Suppose, instead of shipping this cotton and selling it to a purchaser in Texarkana, he can sell it and ship it to a manufacturer in New England, in Boston, Philadelphia, New York or elsewhere, but in order to get a lower price on the raw material, lower than he will have to pay if he ships it to any of these New England points, he buys it up and manufactures it in Texarkana or points where he gets the benefit of this low rate, and then ships out the manufactured products to these States, would it not result exactly——

MR. THOM: I do not think so.

MR. SIMS: He is getting the advantage of lower-priced

cotton and manufacturing it in the State where the transportation cost is naturally lower than the average transportation elsewhere.

Mr. THOM: Here, you say Texas has got a policy of building up Texas. That means Texas people dealing with Texas distributing points. Suppose you take New York, with its immense markets, and its immense ports, and let it have a similar policy, of excluding other States. Now, New York has a great deal to give to other States. Would you have a well-balanced system of commerce among the American States when you would give to New York and Pennsylvania and Massachusetts, with the three great markets of those States, the right to exclude the other States?

Mr. SIMS: I am not talking about the merits of your proposition. I am talking about the possibility of enacting legislation. What will the State of Texas do, with her eighteen or twenty members of Congress, counting those in the Senate—what will they do about enacting a national charter provision, of this kind, that will increase freight rates on the large cotton crop of that State? Will they vote for any such thing? I am talking about the practicability of getting this legislation.

Mr. THOM: I do not know what the Texas delegation will do. My hope is that they will take a comprehensive and national view of the whole situation.

Mr. SIMS: But your observation has been, I judge,—and I am afraid it is the observation of everybody—that there is always a circumscribed local conception——

Mr. THOM: But if a man——

Mr. SIMS: It does not matter about a man, because if they do not have men that represent them, they turn him down and get one that does. This is a practical matter.

Mr. THOM: If we are going to have men in Congress who can never get outside of their local situation, we are in a bad way.

Mr. SIMS: Do you know of any way of getting them here in opposition to a local situation?

Mr. THOM: I hope they are here now, Judge.

Mr. SIMS: Do you know of any way of getting them to act in spite of a local or district interest?

Mr. THOM: The only way, as I see it, is to get the district to realize and appreciate what its real interests are.

Mr. SIMS: They always——

Mr. THOM (continuing): And not be governed by a narrow view.

Mr. SIMS: They always think the particular thing which they are doing in that locality is the dominant patriotic consideration. Let me tell you of something in your own State. I had to go up against it myself. A portion of the State of Virginia raises peanuts, and the delegation of members of Congress elected from Virginia in that section, came before the Ways and Means Committee and demanded a high protective duty on peanuts. Were they patriots, or what were they? It was contrary to the democratic policy and the democratic proposition, and yet those members from Virginia, as good members as we have got, pleaded before that committee to comply with requests of the peanut growers who sent them to Congress, to give them a high protective duty, right in spite of the democratic position taken on that subject.

Mr. THOM: The only answer I can make to you is that this proposition is a great deal bigger than a peanut. (Laughter.)

Mr. SIMS: In the district from which these gentlemen came, it was the largest issue which they had. I am talking now about practical things.

Mr. THOM: I do not know, but I hope that those gentlemen from the peanut district of Virginia will rise to the national and universal aspects of this great problem. I do not know whether they will or not.

Mr. SIMS: What is a representative of Congress? Is he not an agent of those who sent him here?

Mr. THOM: Yes; he is; but he is an agent to do this: He is elected to represent the highest and most enduring interests. He is not an agent to simply reflect the whims and lack of judgment in his district.

Mr. SIMS: How many representatives could be elected from the district in Virginia in which the Newport News Ship Building and Dry Dock Company is located, who are opposed to the building of ships there?

Mr. THOM: I do not know.

Mr. SIMS: You must deal with these matters in a practical way. Your Virginia man could not come to Congress if he would not present this peanut matter to Congress, because if they did not do so, some others would. The peanut would still have been in Congress. That is a fact. You cannot get away from it.

Mr. THOM: You are drawing a mighty gloomy picture of this country, if no man can see beyond his own district.

Mr. SIMS: I am talking about the past and present.

Mr. THOM: Let us talk about the future.

Mr. SIMS: Well, didn't I see, on the formation of the tariff bill, a southern Senator, a good man and able man, and a patriotic man, as patriotic as any, ask for a protective duty on sea island cotton that grew in his district?

Mr. THOM: I can only defend my proposition, and not Congress.

Mr. SIMS: But Congress has to take care of these conditions, and Congress is the country, and when you are talking about theoretical things, we ought to see what can be done.

Mr. THOM: Judge, I think I think better of Congress than you do. Maybe I do not know what you think about it.

Mr. SIMS: I have been here twenty years, and it is still a problem to me—or, I will have been here twenty years, soon. Here is a proposition that is an actual fact. It is a

condition that confronts us, and not a theory, and you have got to do something. I believe that you will have to go in and reform local views, and if you think you can do so, I suspect that you will have a pretty difficult long distance matter to undertake.

MR. THOM: The problem is for the country to assure itself that the very fundamentals of its commercial prosperity are provided for.

MR. SIMS: To help the country through the railroads, you mean?

MR. THOM: If I should come to you with a private interest, in respect to this matter, I should not complain that you should discard my whole argument.

MR. SIMS: The great cotton crop of Texas, to them, is not a private interest.

MR. THOM: It is not?

MR. SIMS: Not in the attitude they take of it.

MR. THOM: If you go to take any of it you will find it is.

MR. SIMS: It is not, though. It is just as dominant an interest with them as the peanut industry is to the people in your State. They think the people who eat them should aid them by paying a protective duty—a higher protective duty. I have found, in my experience, whenever a protective tariff will relieve or assist an industry, in a democratic district, it is difficult to find a man who will not urge a protective tariff for that industry.

MR. ADAMSON: A parliamentary inquiry, Mr. Chairman.

Was not a law passed to put a protective tariff on peanuts?

MR. SIMS: It is on there now and has been on there. They wanted it increased. It was not sufficiently large.

Now, I want to help the situation if I can.

MR. THOM: I am encouraged by that, Judge, anyhow.

MR. SIMS: The situation now, is one that confronts the whole country, and as to the future, inasmuch as unbridled private ownership, for many years, had its reign, and wrought wreck and ruin upon the railroad industry, and in-

asmuch as we can no longer finance the railroads, as they were once financed, as you, yourself, admit—inasmuch as the complex regulation of forty-eight States and the general Government, which does affect, perhaps injuriously, the railroad facilities—inasmuch as we feel morally certain that your propositions as a whole, are not going to be adopted. right or wrong, whether they approve or do not approve of them, it does seem to me that you, and those who represent the owners of these properties, which they now do not want to sell, should begin to consider the inevitable, and be ready to make some sacrifices themselves, and to quit drawing dividends, when, in order to do so, they deprive their own railroads of sufficient facilities to do the business of the public.

Mr. THOM: I know of no case where that is done.

Mr. SIMS: How many millions of dividends were paid last year?

Mr. THOM: I do not know. There is a vast percentage of the stock of the railroads of the country that did not pay a cent.

Mr. SIMS: There was still about a billion dollars of net earnings paid, as I recall.

Mr. THOM: I do not think any judicial mind will complain of the railroads' dividends in the last series of years.

Mr. SIMS: Has any railroad a right, imbued with the interests of the public, to pay dividends at the cost of necessary equipment on that line?

Mr. THOM: It has no such right, nor can you get new money in a railroad unless there is a return on the money already there. Your problem, however, as a statesman, is not to deal with anything except suggestions to provide for the future. That is what statesmen are for.

Mr. SIMS: I have never heard yet any propositions brought up with reference to dealing with railroads that did not put in, as a condition precedent, that the stockholders should have a fair return on their money in the way of dividends

paid out. A dividend is earned and properly earned, if it is put in the equipment of the railroad.

Mr. THOM: How can you deal practically with the question of railroad credit, unless there is some return actually paid out.

Mr. SIMS: I do not regard a stock sale as a credit interest.

Mr. THOM: I think, if you will——

Mr. SIMS: If I owned a hundred acres of land, and I sell a one-fourth undivided interest in that to somebody else, I do not regard that as a credit interest at all. I just part with a part, and somebody bought it for what they thought it worth. Every time a railroad, without extending its lines, increases its stock sales, the individual interest of the remaining stockholders is lessened, unless they buy additional stock in proportion to that which they owned. I do not regard it as a credit interest at all.

Mr. THOM: When that amount of money that the stock brings in is expended in increasing the plant, is it not?

Mr. SIMS: If the plant is in being, no.

Mr. THOM: When you sold your farm, you put your money in your pocket.

Mr. SIMS: Yes, sir.

Mr. THOM: If the stock of the railroad is sold, the money which it brings in is put into the plant, and not into the railroad's pockets. There is an increased asset.

Mr. SIMS: He has his value, which is represented by the increased value of the property into which it went, just the same as in receiving dividends on the stock, but instead of declaring a dividend of 5 per cent or 4 per cent or 6 per cent, that money is expended in the plant, and that is an investment. He has his dividends, but in the form of more valuable property.

Mr. THOM: At the same time, judge—I do not know whether we are getting anywhere—but it seems to me where you and I stand is this: You say that the present condition is an unbearable one from the standpoint of the public, and

there must be a greater assurance of the facilities than there is now, under existing conditions, and this must be provided for the future. That is what I say. Then your conclusion from that is that there ought to be Government ownership, and my conclusion is there ought to be improved regulations. You are the men to determine it.

Mr. SIMS: No, I do not state my conclusions just as you have stated them. In the first place, my conclusions are that something has to be done. My next conclusion is that that which you propose cannot be done. Something has to be done, and that which you propose cannot be done, and you say, in the absence of that being done which you say ought to be done, that Government ownership is inevitable. I am only asking you to consider the inevitable, not as desirable, not as a first thought, but as a reasonable probability.

Mr. THOM: But that is your conclusion, that it is inevitable. I say you are the man to determine that, among others.

Mr. SIMS: You have just announced that doctrine yourself, that you agree it is inevitable.

Mr. THOM: Undoubtedly.

Mr. SIMS: Then we both agree?

Mr. THOM: No, we do not agree, because you say that what I suggest cannot be done.

Mr. SIMS: I say I am afraid it cannot be done.

Mr. THOM: I think it can be done.

Mr. SIMS: I think so.

Mr. THOM: But I know so. And I think it can be done. Now, you say that in view of your idea it cannot be done, that something else more drastic must be done, and that is Government ownership. I say that I have presented my views on that subject. You are the men to determine that, I am not.

Mr. SIMS: I asked you if you discussed this matter with your executive committee and the owners of the railroads?

Mr. THOM: It is not a matter to be discussed with them. The Government can resort to government ownership without

their consent. It is not a matter for them to consent to. You can adopt the policy of Government ownership without our consent.

Mr. SIMS: But you are not willing to sell?

Mr. THOM: We do not have to be willing to sell for Government ownership.

Mr. SIMS: I think you will have to come to that conclusion before there will be any Government ownership.

Mr. THOM: I do not know about that. Of course I cannot tell.

Mr. SIMS: As long as your property is so valuable, so desirable to the present owners, the present owners are going in some way or other to continue in the railroad business.

Mr. THOM: Let me make one prophecy. If the present system is persisted in it may not be long before the principal advocates of Government ownership are the railroad owners themselves.

Mr. SIMS: It think it is inevitable, it is bound to be that way. I think you are exactly right about it.

Mr. THOM: You cannot complain if they are trying to do the thing which they believe will meet the public conditions under that Government ownership, and we have brought that question directly to you; you are one of the ten men who are primarily to pass on it. We brought it frankly to you and stated our views. Is there anything else we can do than that?

Mr. SIMS: So you have not studied the matter so that you can give your views as to whether or not it is practicable or possible to introduce some guarantee of government earnings, secured by a lien on the properties?

Mr. THOM: I told you about that, that I believed that Congress would never consent to a governmental guarantee. As I stated before, you know Congress better than I do.

Mr. SIMS: I did not suggest it as a proposition coming from you, but as a possible suggestion.

Mr. THOM: I know, but whatever authority it comes from it never occurred to me that the Government should guarantee the securities of these railroads. It may be that you are right about it. If the Government is ready to guarantee the returns on these securities, it is a new situation to be taken up and dealt with. Nobody on the part of the railroads ever believed that possible.

Mr. SIMS: The railroads first had to consider it as a fact that the Government would have to be secured by first liens on all existing properties as to any defaults in earnings the Government might have to make good, and that is a matter of contract.

Mr. THOM: You appreciate that is simply rapid progress to absolute destruction.

Mr. SIMS: I do not think I would advise the Government to guarantee an uncertain business.

Mr. THOM: Suppose a railroad company were to make an arrangement to pay out a certain amount to its security-holders, and if it did not earn those dividends to put them as a lien upon their property. How long would it be before that property would become absolutely worthless to the owners.

Mr. SIMS: If it is a good property it would not be, because the Government is only guaranteeing the payment of a minimum dividend and giving them the benefit of all over and above that, and if the Government loses on the minimum dividend, if the Government has to pay something the railroad did not make, the sooner it goes into liquidation the better. With a minimum dividend, one by which they can supply, and one which will make a market for their securities, without depending on the uncertainty of labor and the uncertainty of the cost of material and the uncertainty of conditions over which the railroads themselves have no power of control—if they are not willing to risk, if the prior owners are not willing to risk this, then the Government certainly should not risk it.

Mr. THOM: Do I understand that you are agreeing with the conclusion that the Government will not be willing to guarantee the return on these securities?

Mr. SIMS: I doubt it exceedingly, because, as you say, it is a new question, and has not been discussed. I am only speaking of it as a possible solution, lying between the field of absolute private ownership and absolute Government ownership—a government corporation.

Mr. THOM: If the Government is not ready to do it it is not a possible solution, is it?

Mr. SIMS: I mean as a possibility. The Government, of course, as I say, having a control in the railroads over the stock, I mean to the extent of the stock upon which the Government has guaranteed a dividend so as to see what the Government officials approve is done by the railroad. In other words, they would have to submit to that which is partially Government ownership; that is, if the result is equal to it, that anybody that can absolutely regulate your earnings on any piece of property potentially owns the property to all intents and purposes.

Mr. THOM: You think you have got us now?

Mr. SIMS: I think we have.

The CHAIRMAN: Are you through, Mr. Sims?

Mr. SIMS: I am going to suspend for the present.

Mr. ADAMSON: I know it is not according to our ruling to ask a question out of turn of the witness, but it is not a violation of that rule to ask Judge Sims a question, is it?

Mr. SIMS: I will not object.

Mr. ADAMSON: If we are actually in a condition of wreck and ruin and destruction, and the only avenue of escape is the alternative proposition of Government ownership or regulation of the carriers, which they themselves prepare and dictate, would it not be safer for us to reject both alternatives and repeal the commerce clause of the Constitution?

Mr. SIMS: The judge has started a new proposition, which I have not considered as possible or probable.

Mr. THOM: I want to enter my protest here against the suggestion that the carriers are dictating any terms. I was asked by none more earnestly than by Judge Adamson to come here and make our suggestions, and I do not think it is fair now to put us in the position of trying to dictate terms.

Mr. ADAMSON: I will change the word from "dictate" to "suggest."

Mr. THOM: I am very glad to have the change, judge.

Mr. ADAMSON: Yes, I will say "suggest."

The CHAIRMAN: Have you concluded your examination, Mr. Sims?

Mr. SIMS: There are some matters I may wish to bring before Mr. Thom, on which I am not prepared, later in the hearing. They may be brought out by some other gentleman or some other witness, and I may not inquire further in the subject.

Mr. ADAMSON: I move that the committee do now adjourn.

Mr. CULLOP: Until Friday morning, at 10:30 o'clock.

The motion was agreed to, and at 1:20 o'clock p. m. the committee adjourned until Friday, December 1, 1916, at 10:30 o'clock a. m.

The Joint Committee met at 10:30 o'clock a. m., pursuant to adjournment, Senator Francis G. Newlands presiding, also Vice-Chairman William C. Adamson.

Present:

Senators Robinson and Brandegee, and Representatives Sims, Cullop, Esch, and Hamilton.

The CHAIRMAN: The committee will come to order. We will now go into executive session for a short time in the adjoining room.

(The committee proceeded to the consideration of executive business, and after such consideration the doors were reopened.)

(Mr. Adamson made an explanation as to a newspaper report of his views on the 8-hour law.)

The CHAIRMAN: Mr. Underwood, will you proceed with the witness?

Senator UNDERWOOD: Mr. Chairman, the questions that have already been asked Mr. Thom by other members of the committee cover the field of interrogation that I had in mind, and I do not care to occupy any time in making inquiries.

The CHAIRMAN: Mr. Cullop, will you proceed with the witness.

Mr. CULLOP: I understand that Mr. Thom desires to make a statement, Mr. Chairman.

Mr. THOM: Before proceeding I would like to do what I can to clear up a misapprehension which I understand exists in some minds with respect to one of the proposals which we have submitted to the Committee. The idea seems to have obtained somewhere that under these proposals our intention is to do away with the State authority and State commissions. I wish it to be distinctly understood that we are making no such proposal. We have not undertaken to outline the exact place where the separation between State authority and Fed-

eral authority should be, but we have announced the principle which we advocate and which I now wish to emphasize, and that is that in the matters where the exercise of authority by a State operates beyond the State border and affects the affairs of another State, or affects in a substantial way interstate commerce, that then the authority should be entirely national. In those matters, however, where the authority of the State does not operate beyond its own borders, but deals with affairs within its borders entirely, we do not advocate the substitution of the national for State authority. Of course when we come to consider where a line ought to be exactly drawn we find some matters falling on one side of the line and some matters on the other side of the line. I am not now attempting to discuss the specific matters, but to announce the principle which we advocate, and that is—and I repeat it—that no State should want to exercise an authority in a matter which extends beyond its own borders and affects the affairs of another State and the people of another State, or which affects interstate commerce, but in those matters which are entirely within its own borders, of course, it ought to continue to exercise the proper authority in respect to them.

Senator ROBINSON: May I ask you a question?

Mr. THOM: Yes, sir.

Senator ROBINSON: Does your statement now apply to the making of rates for purely intrastate traffic?

Mr. THOM: It does. We think that the making of rates of an interstate carrier on intrastate traffic does affect the people of other States and does affect interstate commerce.

Senator ROBINSON: I do not think I made my question quite clear to you; at least your answer does not seem to me to be quite responsive to my question. On purely intrastate traffic, carried upon a railroad which is also engaged in interstate commerce, do you think that the Federal Government should fix the intrastate rate?

Mr. THOM: Yes. I have said that the fixing of that intra-

state rate constitutes what would be the measure of contribution by the traffic of that State to the upkeep of the interstate carrier, and would also have the effect of controlling the carriers of commerce.

Senator ROBINSON: I merely wanted to know whether your statement this morning was a modification of your former statement. I understood your former statement very clearly.

Mr. THOM: Not at all; I am trying to make clear my former statement with the statement now, as I said then, that I think that the fixing of intrastate rates on interstate carriers is a national matter.

Senator ROBINSON: Now, you say as to purely intrastate matters the States ought to control. What would that embrace?

Mr. THOM: I think the grade crossings—I am illustrating—the grade crossings, the establishment of stations——

Mr. ESCH: The speed of trains?

Senator ROBINSON: Why the speed of trains, if it is a through train?

Mr. ESCH: It is police authority.

Mr. THOM: I am not certain about that, Mr. Esch, with respect to the speed of trains. I think that is a debatable matter and I form no special judgment upon it. For example, we find this situation, that the carrier will not stop a through train at a certain locality because the judgment of the carrier is that it would best accommodate the travel by not doing that. Very frequently there have been local ordinances requiring the train speed to be reduced to two or three miles an hour through that locality. Now, that affects the whole through movement.

But those are matters for this committee to take up and pass upon. The principle, Senator, which I have announced, and which appeals to me, is the one which I have tried to express.

Senator ROBINSON: The statement you have made this morning does not differ, as I understand you, from the statement you made before?

Mr. THOM: Not at all. I was trying to correct a misunderstanding I believed to exist of the statement I had made. I was not attempting to modify it. I was attempting to impress it and emphasize it.

Senator ROBINSON: I think I understood you correctly in the beginning.

Mr. THOM: I think you did, but I heard that some gentlemen who are not attending these meetings had a different view, and I merely wished to emphasize that.

The CHAIRMAN: Mr. Cullop, will you take the witness?

Mr. CULLOP: Mr. Thom, I want to ask you a few questions that I do not think have been brought out, at least to my mind, clearly. Other members have covered the ground pretty fully, and I only have a few matters that I want to interrogate you about.

Mr. THOM: Yes sir.

Mr. CULLOP: Would not national incorporation remove the trial of causes between the citizen and the railroad company from the State courts to the Federal courts?

Mr. THOM: No; the act of Congress would take care of that.

Mr. CULLOP: In the event of national incorporation, do you think it would be advisable to have a provision maintaining litigation in the State courts?

Mr. THOM: I do.

Mr. CULLOP: As between the citizen and the railroad?

Mr. THOM: I do. You will find a parallel to that, Mr. Cullop, in the litigation under the liability law. There, by express terms of the act of Congress, the litigation must take place in the State court unless there is some ground for removing it elsewhere.

Mr. CULLOP: Other than the fact that it is a Federal law?

Mr. THOM: Yes sir, or a Federal question. In order to be entirely accurate I will say that there should be a provision in the law forbidding the removal to the Federal courts of litigation instituted in a State court simply on the

ground that there is a Federal question involved arising under a Federal statute.

Mr. CULLOP: I have long since had the idea that such a provision ought to be generally adopted, as it would relieve the citizen of many burdens which are now imposed on him in the way of litigation by removal of cases.

Mr. THOM: I am entirely in sympathy with preserving the terms of the act of Congress as to the jurisdiction of the States—in the State courts, I mean.

Mr. CULLOP: In many instances it is practically a denial of justice because of the added litigation. Now, you spoke of double taxation. Do you not think that the matter could be remedied by a provision of law providing exemption on the part of the mortgagor to the amount of the indebtedness of the mortgagee by some provision of law?

Mr. THOM: That may be entirely controlled. At one time I heard you call attention to the law of Indiana.

Mr. CULLOP: On real estate mortgages?

Mr. THOM: On real estate mortgages, and that is a perfectly practicable and feasible method. It is a question merely of the policy that Congress desires to adopt in respect to it.

Mr. CULLOP: What would be the result of such legislation in the event that the mortgagee and mortgagor lived in different taxing jurisdictions?

Mr. THOM: Then it would be to transfer the benefit of the taxing power from one jurisdiction to the other, as to some value of the asset.

Mr. CULLOP: Could that be done under the power of the State?

Mr. THOM: That part could be done. The whole thing could be obviated, though, by a different method of applying the taxing power.

Mr. CULLOP: It is certainly unfair to have the double taxation as it is, or at least ought to be, enforced now so

that either the mortgagor or mortgagee should have some relief so as to avoid double taxation.

Mr. THOM: The justice of that proposition is undeniable, it seems to me. How far it is practicable as a system of taxation, is another question.

Mr. CULLOP: In the State of Indiana we have a law relating to mortgages on real estate that upon application to the proper authority the mortgagor can be relieved in the taxation of his property in an amount equal to the mortgagee's interest, whatever the loan may be. Do you think that such legislation as that would obviate the matter of which we spoke then in reference to double taxation?

Mr. THOM: Of course that removes the objection of double taxation.

Mr. CULLOP: Now, as to the reorganization of the Interstate Commerce Commission, what would you think of a plan to reorganize it on the plan of the Federal judiciary? Take, for instance, the Interstate Commerce Commission, composed of seven or nine members as the supreme authority, and then divide the United States into different districts with commissioners to hear the complaints in their respective districts, with the right of appeal or removal to anyone who might complain of a ruling, to the Interstate Commerce Commission, where it could be reviewed just as you do now in cases in the Federal courts?

Mr. THOM: If I understand your question it is practically the suggestion which I have been advocating here.

Mr. CULLOP: I am glad to know that you have.

Mr. THOM: That seems to me to be in principle the same. Now, I suggested here, in the course of my remarks, a system by which the Interstate Commerce Commission should consist of seven to nine members, as they or Congress may feel is the necessary number, to sit in Washington, and with what we call "Regional Commissions," to correspond, as I understand it, with your suggestion of a distribution of

subordinate bodies into districts, to be determined by Congress.

Mr. CULLOP: Inferior tribunals?

Mr. THOM: Yes; and they would be close to the place where the complainants were, and would live there and be acquainted with the local atmosphere and local conditions, local views; and they could take all the testimony, hear all the case right there; formulate their conclusions on it, and send them up to the Interstate Commerce Commission, where it would be subject to exception, as you have suggested, and those exceptions to be argued before the Interstate Commerce Commission, either by the complainant or by the carrier, or by anybody who might be in interest—any community; and with power, likewise, to the Interstate Commerce Commission of so controlling the matter that, even without exception, they may say “We will not let that decision pass through here, notwithstanding no one objects to it, because it puts the administration of the law in that section entirely different from what we have determined on for the balance of the country.” So, as I understand it, Mr. Cullop, the suggestion you have made, and the view I have, are entirely in harmony.

Mr. CULLOP: I am glad to know that. Supposing you were to divide the United States into twelve or sixteen different jurisdictions or circuits, with a commission of three, who would occupy the relations with the Interstate Commerce Commission that a district court—Federal Court now occupies to the Supreme Court—giving such a court or commission the right to hold hearings over their respective districts, so that the litigation would be brought close to the people, and with the right of appeal to the Interstate Commerce Commission by filing exceptions, or otherwise as might be provided by law, and with the right in the Interstate Commerce Commission to review the question, if either party sought to have it reviewed: Could you not, in that way, bring the settlement of all these disputes near the

people, and give them better opportunity—in fact, both sides—to be heard where their witnesses reside, and where the questions in dispute arise?

Mr. THOM: I think so. May I illustrate that just a little?

Mr. CULLOP: Now, in the event of doing away with the State commissions, about which you have spoken, would not this take the place and afford each State or community the right of regulation, and be no conflict between the two authorities?

Mr. THOM: Yes; except that I have not advocated, as I have just explained, doing away with the State commissions, but in the respects that the jurisdiction of the State commission was transferred to the National Government, it would be just as you say. Now, may I illustrate what I know to be the difficulty—one of the difficulties?

Mr. CULLOP: I will be very glad to have you do so.

Mr. THOM: This is what I know to be one of the difficulties, which a very intelligent State Commissioner finds in respect to that matter. He says he is constantly against the determination of questions which are arbitrarily limited by the State line, whereas the transportation problem does not limit itself by those lines. At the same time, he says it is very important to have a local conception of all these matters; but if you could have some such body as you and I are referring to—some regional or district sub-commission, whose jurisdiction would run according to the lines of transportation, instead of according to the arbitrary lines of the State, he believes that his usefulness would be very greatly increased; and that is the view which has appealed to me.

Mr. CULLOP: If I have understood you correctly—and I think I have—it is your contention that the Federal Government has a right to regulate the intrastate as well as the interstate transportation, under the power of the Commerce Clause of the Constitution?

Mr. THOM: If it is done by an instrumentality engaged in interstate commerce.

Mr. CULLOP: Certainly. Now, if that power exists—and I think it is clear from the decision in the 234 U. S., that the court has settled that proposition—what is the office now of the State commissions, in the event the interstate commission or the Federal Government should take jurisdiction over that matter?

Mr. THOM: If the Federal Government takes the jurisdiction over the matter, of course the State authority would cease.

Mr. CULLOP: It would no longer have any functions to perform?

Mr. THOM: In respect to the particular matter over which the Federal jurisdiction was constitutionally extended.

Mr. CULLOP: Now, do you construe that to go far enough to regulate the police powers which the States have reserved in regard to the operation of roads, such as the building of depots, relating also to crossings and grades, and other things that are connected with the operation of railroads?

Mr. THOM: My conception of the constitutional limitation is one thing; my belief as to the proper policy is another thing, in respect to the question you have just asked. My belief is that, constitutionally, the Federal Government would have authority to take entire charge of the instrumentality of interstate commerce in all its relationships. I think that is constitutionally possible. I do not think it is wise that that full authority should be exercised at the present time.

Mr. CULLOP: Now, in regard to the bonding of roads or raising finances for them, have the States, through their commissions, attempted to exercise authority over interstate roads in relation to the bonding of them, so that the jurisdictions have been conflicting?

Mr. THOM: Yes.

Mr. CULLOP: There are already instances of that kind?

Mr. THOM: Yes, a good many.

Mr. CULLOP: You spoke the other day——

Mr. THOM: You will find, if you are interested in the subject particularly, a very interesting case of the general power, in the Supreme Court of Maryland, where Maryland undertook to exercise that power in regard to the Baltimore & Ohio Road.

Mr. CULLOP: You spoke the other day of a certain amount of mileage that was able to refund or bond itself, and a certain number of mileage that was unable to bond or refund. I would like to hear you go over that a little more fully, and develop the idea more fully than you did the other day. I think you mentioned 185,000 that were unable to refund or bond themselves, and 49,000 that were. In other words, what is the cause of the inability of this great number of mileage? I might ask, further: Is it because it is bonded to its full value now, or is it the reckless financing or management of the road that prevents them from raising the necessary capital?

Mr. THOM: What I said in the respect that you are now alluding to was this: I was referring to the power of the road to obtain new money; not for the purpose of refunding, especially, but new money for the purpose of creating additional facilities.

Mr. CULLOP: An additional amount to that which they already have; is that it?

Mr. THOM: Yes.

Mr. CULLOP: That is what I wanted to bring out.

Mr. THOM: Yes; and I was trying to explain the view that I entertain of the great desirability, if these railroads are to remain stable, of being able to finance themselves by the issue of stocks, instead of bonds; and I stated that in order to finance by the issue of stock, the general view, as I understand it, is that the revenues of the roads must be large enough to pay at least a six per cent dividend on the

stock, with a surplus of at least three per cent in addition, and that applying that test, there were thirty-nine railroads which have a mileage of 47,363 miles, which could probably be financed by the issue of stock at par; whereas, under the same test, there are 137 railroads, having a mileage of 185,219 miles, that could not be financed by the issue of stock at par.

MR. CULLOP: Now, is that because of the over-bonding or the territory that is penetrated by these roads, or because of the manner of financing them heretofore?

MR. THOM: I think you will find the causes which have led up to that to be mixed causes. I do not undertake to deny—I do not in any way take the position that some of the objectionable things which have been done in respect to financing railroads, have not had an effect on the public estimate of railroad management. Whereas these objectionable things, as I am informed, relate to only about ten per cent of the mileage, I think that they have had an effect upon the public mind, but I do not think that that alone explains. I think that after allowing for all of that there are other causes and other difficulties which have created insuperable difficulties. One of those is—and these things that I am now referring to have a vastly greater influence on the general view of the investor than the other matters to which I have just referred—that there is no power on the part of the investor, when he gets his money in, to control the amount of the earnings that will come from that property; that there is, likewise, no power, speaking in general terms, for him to control his expense. When those two things are brought together, the very fundamentals of the desirability of an investment are involved. If you cannot control either your income or your expenses, you find that your chance of success is very much limited, and when you find also that those matters are controlled—both of them—by considerations which spring from a willingness to publicly agitate the question, to determine it by political ex-

agencies in any particular case, you find such a very serious situation created that the investor shrinks from entering that field of investment, when he considers the attractions that may be open to him in other fields.

Mr. CULLOP: Has not a great deal of this distrust been created in the public mind through the manipulation of the stocks and securities of the railroads on the boards of trade and stock exchanges of the country? The bulling and bearing of the market?

Mr. THOM: I have no doubt that those things apply to railroad securities as they do to every other security. But let me say that I am entirely convinced that if there had never been any of them, if there had never been anything in railroad financial management that has been criticized, that the record was absolutely clear and respectable, but there were left the conditions where the system of governmental regulation was repressing, where there was no control over revenues and no control over expenses, you would find the same condition you find now in respect to the difficulty of financing.

Mr. CULLOP: Is there any good reason in your mind why the railroad stock or bond should not be as stable in the markets as that of any other staple product?

Mr. THOM: Yes, there is a very good reason.

Mr. CULLOP: I should be glad to hear you state what it is.

Mr. THOM: I have just stated that where the amount of your revenues is beyond your control no amount of industry, no amount of genius, can affect the level fixed by governmental authority on your revenues, and no amount of good management can control the amount of your expenses, and therefore where the net earnings is so absolutely beyond the control of the man who puts his money into it, there arises at once a reason of overwhelming consequence why the bonds and stocks of railroads should not be as desirable as the other character of investments to which you allude. If, however, Government concludes that the neces-

sity for measures of correction and repression simply without anything else have passed and that there be the same co-operative spirit in the regulation of these enterprises of railroads as is in the banking system of the country, I believe that an immensely greater credit will be attracted to them.

Mr. CULLOP: Do you think these are the reasons which have occasioned the wide fluctuations in the values or sales of the stock of the same road which frequently occur in a very short period of time and without any reference to the earning capacity of the roads?

Mr. THOM: I think if you will watch the stock markets you will see that the fluctuations in railroad securities is nothing like as great as in others, and I think if you watch the stock markets in respect to the stock you will see that the sales are very much better. In other words, the spirit of the speculative public is one which makes wild speculation, and the spirit of the public in these matters is very much different.

Mr. CULLOP: Such wide changes and fluctuations do not occur in the stock of banks, trust companies, real estate mortgages and kindred securities, then why is it that they do occur so rapidly in railroad securities?

Mr. THOM: I say I think your facts are wrong there. I do not think that the fluctuations in railroad securities are anything like as great as in many other classes of investment. You probably refer to some historic incidents when there were these great fluctuations; they occurred for special reasons. They have occurred not only with respect to railroad securities, but in respect to others. For every railroad stock that has had a history of great advance or great decline, I think I can name some security of another class of industry that has had the same, and that now the wide fluctuations are in other classes of securities instead of in railroad securities, because they are practically neglected.

Mr. CULLOP: Have they not been neglected because of

the distrust or the fear that the public has of them from former manipulations of them on the stock markets?

Mr. THOM: I do not think so. I have explained my view about that. I think if all that was withdrawn that the great fact which I have attempted to express here would control the matter anyhow, and in saying that I am not at all losing sight of the fact that in railroad finances, as well as in any other kind of finances, as well as in any other kind of business, there have been objectionable practices.

Mr. CULLOP: There have been very great abuses, have there not?

Mr. THOM: There have been abuses. They have been confined to a small area, however.

Mr. CULLOP: Do you not believe that confidence could be restored in the public mind so as to invite capital into this line of investment if there were provided a method for the issuing of stocks and bonds for railroads, for instance that they could only be issued upon the filing of a petition with the Interstate Commerce Commission, providing for what purpose, what amount, and regulating, fixing the minimum price at which they should be sold, so that the purchaser would know the purpose for which the additional finance was to be raised and thus his investment would be applied to that particular purpose?

Mr. THOM: I think, Mr. Cullop, that is but one of the things to do. Of course you know that that is a thing that I think ought to be done. You have heard me say so before your committee often; you have heard me say so here. But that is only one of the things to be done. We have got to convince that investor not only that Government approves of the issue of the special security and approves of all the other matters to which you have alluded, but you have got to convince him further that there is going to be a proper return on them, and unless you convince him of the latter he does not care how much you supervise the issue of securities, he will not take them because what he is after is his

return, and unless he is assured of that he will not invest.

Mr. CULLOP: The increase of rates reduces the amount of business or patronage of the railroad, does it not?

Mr. THOM: No, sir, the increase of rates up to a reasonable point would not reduce the volume of traffic. The traffic is not created simply by low rates. If there is a profit in the transaction of the shipment in question after paying the rate the traffic will move, and you have got to get a prohibitory rate before you reduce business. You do not get to the prohibitory rate by making a reasonable rate.

Mr. CULLOP: Take certain lines of products that bring a low price on the market, farm products, if the rates are low will it not invite traffic in that line of products?

Mr. THOM: It will not invite traffic in that line of product unless—I will say it will not retard the movement of that class of traffic until you make the shipment an unprofitable one. As long as it is within the range of a profitable and attractive business to the farmer his product will move.

Mr. CULLOP: But, if the rates were lower, would it not inspire him to activities along lines of production that he would not now engage in at all? Many products on the farm can be raised without practically any additional labor. In the cities there is a demand for them, but the rates are such that he cannot afford to ship them for the price they will bring, although they are desired in many congested centers of population. Now if that rate was down to a lower figure where he could afford to produce and put on the market his product, would it not multiply business as well as revenues for the railroad companies?

Mr. THOM: I think the difference between the idea that is in your mind and mine is that you are using the words "low rates," just simply low rates without the relativity in them at all. You say, would not a low rate bring about traffic? I say——

Mr. CULLOP: I should like to modify that a little.

Mr. THOM: Will you let me finish what I was trying to say?

Mr. CULLOP: Yes, sir.

Mr. THOM: I say that if the rate is low enough in relation to what the product will bring on the market it will do all that is necessary to stimulate traffic. The mere making a rate low enough to move the traffic anyhow and then lowering that rate which already moves the traffic, would not move more traffic. It is a question at last of the commercial merits of the proposition. Here is a farm product which, on existing rates, is profitable for the farmer to send to market. Now he will send that if it is profitable to him, and by cutting that rate in half he will not send any more of it, because he is already induced by the profitability of the transaction to engage in the business. And I will say further that the farmer's interest is not in the low rate alone, or principally. What is his interest is to be able to get to market on reasonable terms, and he wants facilities, and he is interested in that rate being high enough to guarantee the facilities, and he is interested in that vastly more than he is in just having rates indiscriminately slaughtered.

Mr. CULLOP: Now, there are certain products which can be raised on farms without additional labor practically. They are a cheap line of products, much desired in congested centers of population for food, but because of the rate charged for transporting them to markets, say a hundred miles, they are unable to produce and put them on the market. It seems to me that if a rate was fixed, without additional cost in transportation to the railroad company which is operating its trains, not to the capacity, in many instances, of the motive power, it would add revenues to the roads, as well as relieve an embarrassing situation existing throughout the country, especially at this time, in the shortness of food products, and add very materially to the revenues of the railroads. I never could understand why railroads do not meet that situation.

MR. THOM: I think you will find, Mr. Cullop, that they do meet it, and not only that, that if they do not meet it that Government has assumed the power of making them meet it. These rates are Government fixed. Now, I will give you an illustration of what you are talking about, I think. Suppose there is a manufacturer of tobacco that has ten boxes that he wants sent down to the station and shipped, and he gets a wagon to take them and that wagon comes along, but has space for twelve boxes instead of ten, and that the man who has the ten boxes is willing to pay 20 cents a box to get them down there—\$2. Now, his next-door neighbor is a manufacturer of tobacco, too, and there is space in that wagon for two additional boxes, and he comes out and says, "You have got vacant space there, and I will give you ten cents a box to take two boxes down." Now, you think that he ought to have the authority to carry those extra two boxes at ten cents, because he has got the transportation capacity there. He is going to the station anyhow, but the result of that is generally this: That load now, under the supposition that I have made, will pay \$2.20. The result of that is this, that when this wagoner agrees to take those two boxes for ten cents, the man who is willing to pay 20 cents a box says, "You must take all of my ten boxes for ten cents. So that when he does that, instead of that load paying \$2.20, the load pays \$1.20. There are thousands of those situations that have to be taken into consideration by rate-making bodies; but we are discussing here the perfection of those rate-making bodies so that they will adequately respond to whatever the commerce conditions require.

MR. CULLOP: Is it not the experience that the enactment of two-cent fare bills in a number of the States has a tendency to very materially increase the revenues of the railroads, because of the reduction of passenger fares?

MR. THOM: That is a very much disputed question.

MR. CULLOP: It did increase the travel, did it not?

MR. THOM: Some people think it did and some people think it did not. The general consensus of opinion is that

while it induced some additional travel, that it reduced passenger rates so low that the passenger business was not contributing its part to the upkeep of the facility, and that the burden of keeping that up was on the shippers of freight, and the burden to an unjust extent was on the shippers of freight; so much so that the Interstate Commerce Commission has examined that question and has so declared, and has directed the passenger fares to be increased.

Mr. CULLOP: But was it not a fact, at least in some jurisdictions, that, instead of decreasing the revenues of the railroads or making it an additional burden upon the shipper, on the contrary it did increase the revenues of the railroads?

Mr. THOM: Of course, I cannot say what has happened in all of the jurisdictions. I do not know; but where it has been examined the contrary effect has been declared, and the representatives of the public have directed that the passenger rates be increased.

Mr. CULLOP: Now, the operation of trains—the expense has been very materially reduced by more powerful facilities, has it not? For instance, formerly one engine would pull a train of 25 freight cars; no car in that train would have a capacity of more than 28,000 pounds. Now, one engine, with the same number of men in the crew will draw a hundred cars with a capacity running from 50,000 to 150,000 pounds in each car. The same number of men man a train of the increased capacity that were required to man the train of smaller capacity. Has not a great saving been brought about to the railroads in the working of this reform or increased efficiency?

Mr. THOM: I think it is one of the greatest tributes to railroad management that, in the face of their increasing costs, their larger expenditures for labor, of their larger expenditures for materials, of their greater facilities which the public was demanding, the better roadbeds, heavier rails, larger yards, and terminals, that they have done everything that human inventive genius would permit to decrease the cost, by adding to the tractive power of the engines, by add-

ing to the character of their facilities, and the result has been in the direction that you state, to enable them to carry a unit of freight, at a lower cost, for the charges that I am alluding to, but the general opinion seems to be that about the limit of tractive power of engines has been reached. Of course, you realize that when you get to the larger tractive power of engines you add to their weight. When you move 100 cars in a train you add to its weight, and that involves also very much heavier and stronger rails and roadbed, and that also requires greatly strengthened bridges to carry those cars. Now, everything that railroad people have been able to think of has been done in that direction, and their achievements have been very great. The result is that their expenses do not stand where they were before these improvements were introduced. Here comes along a demand for \$50,000,000, perhaps, for increased wages, and the other classes of things that I have alluded to have added to their expenses. They are not making anything like the same progress in enlarging their net earnings that these things would have effected, if other things had stood still, and the result I am telling you about is not the result back yonder before these things were done, but the result after they were done. It is a condition that confronts the country today, notwithstanding the introduction of all of these great advances to which you have alluded, and something seems necessary to be done in order to insure the public the facilities if they are to be furnished in the way they have heretofore been furnished.

Mr. CULLOP: Now, were not all of these increased facilities economies to the railroads instead of adding to the expense? For instance, they now have steel cars. The steel car lasts much longer and endures much greater service than the old wooden cars did. The heavy rail is more durable and more lasting than the light rail was, which was used in the earlier period of railroad building, and in the end does it not make the operation of the roads cheaper than

formerly, because of these economies in the use of more durable material for the operation of the trains?

Mr. THOM: Not when you consider all of the increases that have come in other matters. Now, it may be——

Mr. CULLOP: Now, we are getting to where I wanted to get. Have not the increases come in high-salaried officers, presidents, vice-presidents, general managers and lines of that kind? Do you think any railroad president in this country is worth \$100,000 a year to that road or to that investment, and do you not think that that is an imposition upon the man who invests his money in that property? Could he get that at anything else that he would be employed in and does not he get his position through favoritism by the manipulation of the management of the road in his selection?

Mr. THOM: Now, Mr. Cullop, I do not suppose you have at all investigated that matter if you ask such a question.

Mr. CULLOP: I may not have, but I am trying to get information on it.

Mr. THOM: Do you know what a very small percentage of all the expenses of a railroad is involved in the matters that you have alluded to, and that you might wipe them all out?

Mr. CULLOP: I concede it is small, but it is that much of the revenue that is being consumed.

Mr. THOM: Now, just let me answer your question. I will say to you that if every one of those officers worked for nothing, and gave their time and their skill, with the same enthusiasm and earnestness that they give it now, it would not affect this problem at all, because the amount actually involved is so very little. Now, as to whether there is any railroad president in the United States getting \$100,000 a year, I do not know: perhaps you do. I have never heard of any.

Mr. CULLOP: I do not know.

Mr. THOM: Then, why do you say so?

Mr. CULLOP: I have understood so.

Mr. THOM: Exactly. Now, I do not know and you say

you do not know it, but I venture to say this, that the railroad presidents of this country have been selected, not out of favoritism, not out of manipulation, but because of the belief on the part of the people that selected them that they were the best men for the job, and that they could give much more than the salary that is paid in the management of those tremendous affairs.

You cannot get a man that is too big for the responsibilities of trying to make a success of the facilities which he is using in the public service in this country, on these railroads. It is a tremendous job, and the reason that they get such salaries as they do, is because of that belief, and not because of favoritism and manipulation. Of course, I am speaking generally. I have no particular cases in my mind, but that has been my observation of these matters.

Mr. CULLOP: Now, is not some of the mistrust——

Mr. THOM (continuing): And the men who have done so have usually come up from the ranks, where they had no favoritism, and where they have hewn their own way by the things they have shown they could do.

Mr. CULLOP: Do you think any of the mistrust that now exists, of which you speak, in the minds of the financiers, was created because of the manner in which supplies for railroads and the operation of the properties owned by the same stockholders a few years ago—for instance, take coal mines. It was a common habit of a number of men who had the management of a railroad in hand, to buy up a large acreage of coal land and open coal mines. Their connection with the railroads, of course, gave them favorites—favoritism that the independent operator could not get, until in some localities they worked very greatly to the detriment of the independent operator, and in some instances put them out of commission.

Now, do you think that those things had anything to do with creating the distrust in the minds of the financiers that made them hesitate about investing in railroad securities?

MR. THOM: I think wherever anything of that sort has been disclosed, it has been condemned. But, I think you might wipe them all out, and you would still be confronted with the problem you are today, and they have not had sufficient influence upon the investors to prevent them from going into these investments, if they were otherwise assured by a proper and cordial government control.

MR. CULLOP: Would they——

MR. THOM: Now, right there, in that connection, let us get the value of that idea in its relation to the duties imposed upon you gentlemen on this committee. Let us get that. If it is to have any decisive bearing upon the problem which you are to decide, we would have to determine that those things now exist to an extent that if they were all wiped out your problem would be solved. Now, I do not believe that to be the case. I believe, however, that the existence of those things in the past does justify a retention, in your system of regulation, of powers adequate to deal with them, if any of them continue to exist or any of them appear in the future. We think that fully. But I believe your problem goes far beyond that. You are confronted not now with the necessity of removing abuses—because I believe everybody admits that the laws are adequate to that purpose now—but you are confronted with the problem of assuring to the commerce of the future, as well as to the present, adequate facilities, and your task will not be done by simply talking about abuses, because you get nowhere, for the people you represent, as to the future, when you talk merely about abuses. You have got to go beyond that, and say, “We will remove all the abuses, but we will not be content with that; we will assure to the American public sufficient transportation facilities for their present commerce, and their commerce, as it grows in the future.”

Therefore, I have attempted to try to give the proper value to what you have stated, and what I have heard otherwise in respect to abuses, but not to let that, in any way,

obscure the real thing that is before the statesmanship of this country, and that is to provide an adequate transportation facility system, with adequate facilities for the needs, not of the railroads, but of the public that you gentlemen represent.

Mr. CULLOP: But, in order to get the public to understand what the future work is to be, in preparing the way for giving assistance to this great question, the public must understand what the abuses have been, so that adequate means can be provided to prevent their recurrence. Now, along that line, was it not a fact, with reference to some of the coal properties that I have spoken of, owned by many roads, that when there was great demand for coal, in large cities, the cars of the companies hauling coal from these mines, were used as storehouses? In other words, they kept their coal in the cars and kept the cars out of transportation for periods of time—sometimes two or three weeks. Were you acquainted with that condition that occurred with some roads?

Mr. THOM: I am not more acquainted with that than any other man who reads the newspapers. There are vast numbers of railroads in this country which are not coal roads. There are a vast number of roads in this country which are coal roads of which that cannot be said. It may be said of some, but I wish to present to your minds the thought that the thing which is now in the way of the investors, is not those matters, which the general belief in the country is to the effect have already been adequately attended to, by the law-making power, but it is the attitude of the law-making power that will not recognize the necessity for adequate net returns in order to be a basis for proper credit for these carriers.

Mr. CULLOP: But was not management of this kind one of the material things that prevented roads from making earnings so as to make their stocks attractive to the public?

Mr. THOM: Not as I know of, but I do not see how it

affects earnings, but if it did, then, since the investigations which are in your mind took place, these matters were years ago discarded as methods, and yet we still find this difficulty about earnings. We still find, in the public mind, the idea that every time you speak of a railroad somebody gets up and talks about abuses and punishment, and the investors are not going into an industry where the men who control its destinies are all the time talking about punishment and all the time talking about correction, and never a word of help. It is not going to——

Mr. CULLOP: But if you will remove the abuses, help will then voluntarily come. That is one angle of looking at the matter. Now, let me ask you, are not the railroads now carrying more commerce at a better price than ever before in the history of the railroad business in this country?

Mr. THOM: The war in Europe has stimulated an extensive addition in the commerce of this country, and I do hope that the mistake will not be made of basing the system of regulation which is to apply in all times, on the exceptional conditions created by this great world catastrophe.

Mr. CULLOP: Are not the men who operate those industries making preparation for greater business, after the war, than they are now doing? Are not all of the large industries of the country increasing their capacity, extending their plants—have they not taken survey of what the future will be in Europe and in this country, and expecting to do a much larger business in the future than they are doing now?

Mr. THOM: I thought it was a matter of profound uncertainty in the public mind as to whether or not there will be an increased business after the war. I thought the general conception was that it would likely not be, and every time you talk about peace, you will find a cold shiver go

down the backs of those men who have enlarged their plants.

Mr. CULLOP: They are enlarging them, are they not?

Mr. THOM: Some of them—I do not know whether they are now—but some of them did, for war purposes.

Mr. CULLOP: The Bethlehem Steel Works made a very large addition, costing something like ninety million dollars?

Mr. THOM: I know nothing more about that than you do, from reading in the newspapers.

Mr. CULLOP: I saw the interview of the head of the institution. Now, certainly he is not unwise enough, in view of his conduct, to expect the bottom to fall out of the business, after the war?

Mr. THOM: And neither do I expect the bottom of the business to fall out after the war, but I expect very great changes in the economic conditions, relating to business, after the war, and I cannot tell what it will be. We cannot tell what will be the opportunities for our products to get in the markets of the world after the war. We do not know what their buying capacity will be and we know nothing, and will know nothing, until at the end of the war. One man will come along and say, "I think there will be great need for steel after the war, because of the great destruction, and I will take that side of the proposition"; another man of equal judgment may say, "I do not know that we will control that business after the war. It may go to another country." There you are. Everything is an uncertainty.

Mr. CULLOP: Taking the situation as it appears now, with the number of men that have been put out of commission there, because of the war, the destruction of manufacturing plants, the exhaustion of their finances, in the war—waste—would it not appear most reasonable that the business of this country, the commerce of it, would necessarily increase very largely after the war is over, because the fellows in the trenches over there will not arise to produce any more?

Mr. THOM: No, but Mr. Cullop, you have got to consider the vastly increased efficiency of the men and the nations, who have gone through this great discipline. You do not know what it will be. You know you have got men who have been taken away from luxury; who have known all the discipline of need, and all the discipline of self-control, and you are going to put them back, as a force, to rebuild the civilization of those devastated countries. Now, what they are going to accomplish we cannot tell, but we do know that those men will accomplish more than they would if they had not gone through that ordeal.

Mr. CULLOP: But it will take——

Mr. THOM: But I want to say this: I want to say that for us to establish our system of government—I mean, rather than our system of government, our policies of government—upon a war basis of business, would in my opinion be the most short-sighted policy you could get up.

Mr. CULLOP: I agree with you on that. I am speaking——

Mr. THOM: Now, when we are talking about more business and more earnings, we get back, at last, to what we are talking about in the main, in this investigation, and that is a perfected system of transportation, and are we to base that, as sensible men, on the exceptional conditions brought about by the great commercial changes incident to this war, or base it upon the average conditions which will apply in the future, in time of peace?

Mr. CULLOP: Now, one of your plans for assisting business is the national incorporation of railroads, as I understand you.

Mr. THOM: I think that would be the most beneficial.

Mr. CULLOP: In view of that fact that the Federal Government now has the power to regulate both interstate and intrastate charges on commerce, what additional assistance would the Federal corporation be over the present plan other than the one of making it easier to handle in the financing of railroads?

Mr. THOM: I think it would simplify the whole subject of regulation and would assure a national policy on all the matters that would affect the destinies of railroad investment.

Mr. CULLOP: That would be the real benefit in it, in your opinion?

Mr. THOM: I believe that you can handle this great question divided up in authority with different sources of power in different roads and with a different measure of what they may do in a corporate way. But where you have to organize this country now, you have got to make it efficient. You have not got one railroad handling a part of your interstate and foreign commerce with very limited corporate powers, and another with ample, because you do not want a limitation upon your agents. You want the power to determine the entire corporate capacity of your instrumentality of interstate commerce, and you cannot do that except through national charter.

Mr. CULLOP: Now, the national-charter plan will be very strongly resisted or opposed by the States, because it would deprive them of a source of great revenue, would it not?

Mr. THOM: I do not think so. What do you mean by the revenue? I have not got that in my mind.

Mr. CULLOP: Well, nearly every State in the Union charges a percentage for the granting of a charter, a certain per cent of the capitalization, which makes quite a great revenue to the States. Otherwise, by national incorporation the States would lose that source of revenue and hence would be, for that reason, if none other, opposing the change of plan.

Mr. THOM: I did not know that that was a very great revenue, but, if it is, somebody has got to pay it. Now, who is going to pay it? Is it a proper charge to put upon the general public or other States, where one State can create that burden as a condition of incorporation, or is it better, when we are trimming down now everything and putting every

little stone in its proper place in the mosaic we are trying to create, not to have unnecessary tribute paid anywhere, not to have unnecessary burden put anywhere, because you are accounting for every cent of your revenues, and where your expenses are made greater in order that some State may have the opportunity of charging for its franchise you have got to put that expense on some part of the public, either in increased rate or in impaired facilities.

Mr. CULLOP: I believe that is all I care to ask.

The CHAIRMAN: Senator Cummins, will you take the witness?

Senator CUMMINS: In order to avoid any misinterpretation of the questions I intend to propose, I desire to say that I have for a long time favored, and I now favor, the very substantial enlargement of the scope of Federal control. But there are certain phases of the matter concerning which I want to secure Mr. Thom's opinion, and in order that I may conduct the examination intelligently, I will state what I understand to be the argument made by Mr. Thom—first, that the capital required for the proper enlargement and coordination of transportation facilities cannot be secured unless there are, (a) better assurances of the safety of the investment; (b) greater certainty of adequate profit. Have I stated, so far, the argument correctly?

Mr. THOM: I think I made that argument just as you have stated it, Senator.

Senator CUMMINS: Second, that such assurance and such certainty can be established only by creating an exclusive Federal system of regulation for interstate carriers in all matters which affect the interstate service rendered by the carrier. Am I still correct?

Mr. THOM: Will you read that over, Senator. There is one part of it that I did not get.

Senator CUMMINS: That such assurance—that is, the assurance of safety——

Mr. THOM: Yes.

Senator CUMMINS: That such certainty—that is the certainty of adequate return——

Mr. THOM: Yes.

Senator CUMMINS: Can be established only by creating an exclusive Federal system of regulation for interstate carriers in all matters which affect the interstate service rendered by the carrier?

Mr. THOM: Yes, sir; that is correct.

Senator CUMMINS: Third, that the most effectual way to accomplish the desired object is to enact a general law for the incorporation of interstate carriers, and require all such carriers to incorporate under it?

Mr. THOM: Yes, sir; that is part of the argument I made, but that is not the whole of it.

Senator CUMMINS: Certainly; I am speaking of that part of it about which I intend to interrogate you.

Mr. THOM: Yes, sir.

Senator CUMMINS: It has been assumed by yourself and by some members of the committee that the present system has practically broken down, and that facilities for the future can only be secured in the way I have indicated. Mr. Thom, what is your definition of a confiscatory rate?

Mr. THOM: My definition of a confiscatory rate? Do you mean my own or the one under the law, as I see it?

Senator CUMMINS: I would prefer your own.

Mr. THOM: Well, the one which is my definition of confiscatory rate is any rate less than a reasonable rate for the service rendered.

Senator CUMMINS: Without regard to its effect upon the revenue of the company charging it?

Mr. THOM: I say that would be my own definition.

Senator CUMMINS: Yes.

Mr. THOM: I do not mean to say that is the one universally accepted.

Senator CUMMINS: That is, there may be rates, then, which will make no returns upon the value of the property

rendering the service that will, or may be, reasonable rates.

Mr. THOM: That is my individual view. I think the road may be situated in such an unfortunate location and so expensively administered that the charge of reasonable rates on it would not make any return on the investment.

Senator CUMMINS: Is it your view that the investor looks at the subject from that standpoint?

Mr. THOM: No, sir; because the investor has been taught differently from the way in which the rule has been applied.

Senator CUMMINS: It is true, is it not, that when a man is thinking of investing money in railway securities he thinks first of the safety of the investment, that is, the probability of securing a return of his principal, and, secondly, of the interest upon the investment that he is likely to receive from year to year?

Mr. THOM: Yes; those are the things that control him—the safety of both his principal and return, and the amount of his return.

Senator CUMMINS: He wants to know that there is a reasonable probability anyhow, that when he desires to do so he can recoup his capital, that is, can sell his securities and retake his principal, and so long as he remains the owner of the security that he will receive adequate or reasonable interest upon his money?

Mr. THOM: Yes.

Senator CUMMINS: And those two things being fairly well assured to him, he will invest in any security that has those characteristics?

Mr. THOM: The class of the public that is looking for a safe and reliable investment will invest in that. The speculative man will not.

Senator CUMMINS: Certainly. Now, the only evidence, or facts—I will put it in that way—that you have submitted to the committee, bearing upon the disinclination of men of money to invest their means in railway securities is that dur-

ing the last year only about a thousand miles of railway have been constructed?

Mr. THOM: Oh, no sir; that is not all.

Senator CUMMINS: What other facts have you submitted?

Mr. THOM: The other facts which I have submitted are that the public does not favor investing in railroad securities any longer, and I propose that there shall be a great many witnesses here who will show that fact.

Senator CUMMINS: That is your opinion, is it not, rather than a fact?

Mr. THOM: No, sir; it is a fact whether or not the public now seek or avoid railroad investment.

Senator CUMMINS: How do you know that the public is not willing to invest money in railway securities?

Mr. THOM: Because, I get it from the people who are in the investment business, and we expect to have them here to testify.

Senator CUMMINS: What company has endeavored to sell railway securities and failed?

Mr. THOM: Oh, that is another question entirely. They have, however, not sold the character of railway securities that will not consume the margin of safety, and there is another fact that I presented here, namely, that the recent financing of railroads, in the last sixteen years, has involved an increase of about one per cent a year, or about 16 per cent in the additional fixed charges instead of the proportion between stock and bond issues being maintained.

Senator CUMMINS: But you assert that we are not going forward to care in a proper way for the commerce of the country. As I understood it, you said that during the last year we had built but a thousand miles of railroad.

Mr. THOM: That is one of the facts.

Senator CUMMINS: Do you know of any company desiring to build additional railways that has failed to secure the money necessary to do it?

Mr. THOM: I think the companies have come to the conclusion that it is an unattractive deal.

Senator CUMMINS: I asked you, do you know of any company that has endeavored to secure capital that has failed in the attempt?

Mr. THOM: I do not know it. But I add that that question of the result can be affected in two ways, one by the company not attempting to do it and the other by the company coming to the conclusion that the field is not attractive enough to attempt to do it, and that it would better put all its financial energies in increasing and improving the property it already owns.

Senator CUMMINS: I want to be perfectly sure about the one fact, namely, do you know of any company that believed a railway ought to be built and has endeavored to build it and failed to secure the capital?

Mr. THOM: I personally do not know, but I do not know that there are none. I do not know one way or the other about that. I only know the fact that whereas heretofore there has been a large increase in the mileage each year of new roads——

Senator CUMMINS: But there may be other reasons for the failure to enlarge railway facilities than the inability to secure the capital to construct?

Mr. THOM: I have been thinking of that, Senator, and when I consider the vast regions of this country that are in need of new railroads, just as much as they have been in the past, and there has been no extension in them, I cannot believe that the result has been brought about by anything but the feeling on the part of investors that the field is no longer attractive.

Senator CUMMINS: But that is merely argumentative. I wondered whether the cessation of railroad building in a measure was due to the fact that people were unwilling to invest their money in such enterprises, or whether it was due to some other cause.

Mr. THOM: I think it is due to the fact that railroad investments are no longer attractive. Now, that is an opinion.

Senator CUMMINS: But you do not know of any company that has sought to secure the capital and failed?

Mr. THOM: No, but I think I can see a sufficient reason, from what I know of railroad conditions, to show why there would be nothing of that sort advocated by railroad managers.

Senator CUMMINS: What is your test of the necessity of additional railroad facilities?

Mr. THOM: I would say that where the territory is promising enough in respect to its products, agricultural, mineral, or forest, or any products, to make transportation necessary, that then it would be an attractive field, but of course there is a relation between the cost of the enterprise and the amount of traffic that will be produced, and when you get to the point of where there is a reasonably assured traffic that will pay the return on the investment, I think there you have your attractive field.

Senator CUMMINS: You recognize, do you not, that with the railroads as they are now located and the markets as they are now established, that the railroad building of the future must be practically carried on by established railroad companies?

Mr. THOM: I believe that to be the fact, Senator. I think we have got to rely in the future on the extension of present systems rather than the building of new systems.

Senator CUMMINS: Inasmuch as substantially every extension into a new territory must rely upon transportation of an established line, there is really no inducement for an independent company to endeavor to exploit or to develop a new territory, is there?

Mr. THOM: Well, there are some, but I believe that is a disappearing force. Now, heretofore we all know that a railroad could build into a new territory and make itself so disagreeable that it would have to be bought out. I believe now that situations have been materially altered by the public conception of such matters, and that hereafter, as you have stated it, the great thing we have to rely upon to develop new territory is for existing systems to extend into them.

Senator CUMMINS: That is, so long as private ownership continues, the extensions into new territory must, practically speaking, take place through the established lines?

Mr. THOM: Must, for the most part.

Senator CUMMINS: Do you know of any instance in which any established line of railway desired to build new tracks into a new territory and could not do it because it could not get the money?

Mr. THOM: No, but I feel entirely justified in saying that their judgment of whether or not it was desirable to build into new territory has been affected by railroad conditions as established through regulation, and that that feeling in favor of extension would reappear if they could be assured of helpful Government action.

Senator CUMMINS: This feeling, however, has been in the minds of railway managers. They have not sought the minds of the railway investors, have they?

Mr. THOM: Oh, I suppose they have discussed those questions with the representatives of railroad investors, undoubtedly. I have no idea in the world they have shut themselves up like clams and have not considered the usual avenues of securing money.

Senator CUMMINS: I suppose I have already asked you the question, but I repeat it, do you know of any instance in which an established line of railway desired to extend its tracks through new territory during the last year?

Mr. THOM: You have asked that and I answer again that I personally have no knowledge of such an enterprise as that having been offered to the public and having failed.

Senator CUMMINS: What do you regard as the test for the necessity of an enlargement of the facilities of a transportation company in territory already occupied?

Mr. THOM: The test is whether the transportation company is able to carry forward promptly all the traffic that that territory can properly produce.

Senator CUMMINS: Is it your view that without regard to the ebb and flow of traffic—I say the ebb and flow of the

volume of traffic—that the railway company should be prepared at all times to take care of any traffic that may be offered to it?

Mr. THOM: Oh, no; that they should be reasonably prepared for any traffic that they can foresee, and one of the greatest functions of a railroad management is to form a just and reasonable conception of the needs of the public as they develop, and to have its facilities ready when the time of necessity arises.

Senator CUMMINS: It is true, is it not, that within two years that the facilities we now have were more than sufficient to take care of the traffic?

Mr. THOM: If you mean the rolling stock that we have now.

Senator CUMMINS: I mean all the facilities of the railway companies.

Mr. THOM: They were, in the low condition of business, adequate, but we do not have a mere ebb and flow in business. There is, notwithstanding the ebb and flow to which you allude, there is always progress to an enlarged commerce, to a necessity for greater facilities, and that is the thing that has to be provided for.

Senator CUMMINS: You are familiar with the traffic movement of the last five years, fairly so, I assume?

Mr. THOM: I do not know; I suppose I am, just like any other man.

Senator CUMMINS: In what years of the last five has it been found that the railway facilities were insufficient?

Mr. THOM: I have those years in mind. I know the fact that, taking a large view of the question, we can trace through a series of years a percentage of increase all the time. Sometimes that increase is accentuated by special conditions; sometimes it is depressed below the average by special conditions, but there is the consequent growth, if you take a large view of it and do not take it from year to year.

Senator CUMMINS: Do not understand me to controvert the statement that under the present system, since we began to regulate the railways in 1887, the volume of the traffic has quadrupled or more, has it not?

Mr. THOM: I should say so; yes, sir.

Senator CUMMINS: And it is to be hoped, of course, that over long periods we will see a like increase in the future. But there always will be, in the natural course of affairs, some years in which a part of the facilities will not be demanded and other years in which the facilities will be inadequate?

Mr. THOM: That is inevitable.

Senator CUMMINS: And it would not be either economical or wise to enlarge our railway facilities so that they could always promptly care for the peak of the load in a particular month?

Mr. THOM: No, that is not necessary, nor do I feel that under any system of regulation it will be attempted.

Senator CUMMINS: You have already stated that the present year is abnormal, have you not?

Mr. THOM: Yes, sir.

Senator CUMMINS: And you adhere to that?

Mr. THOM: Oh, yes.

Senator CUMMINS: So that, unfortunate as the fact may be that we are not able to expeditiously carry all the commerce that is now offered, that is no proof that there is any serious inadequacy in railway facilities, is it?

Mr. THOM: That is no proof that there is any inadequacy in the railroad facilities which ought to be provided against, standing alone, but I do think that you will find it will develop that the railroad facilities would have been very much better to meet the situation if there had been a normal opportunity for the railroads to look forward.

Senator CUMMINS: Mr. Thom, how much independent capital—by independent I mean aside from the earnings of the railways,—has been invested in railway property in the last five years?

Mr. THOM: I think between six and seven hundred millions a year.

Senator CUMMINS: What amount of earnings have been invested in betterments and enlargements, not included within the ordinary phrase of maintenance and operation?

Mr. THOM: I can not tell you that. I have not the figures.

Senator CUMMINS: You can not remember, or possibly you have never inquired?

Mr. THOM: No, sir; I do not know the fact.

I should like here to put into the record some figures for the year 1915. The reason I have them is because of a question asked by Judge Sims the other day in which he spoke of the billion of dollars of earnings, and why they could not be put in the properties.

Mr. SIMS: Net earnings.

Mr. THOM: Yes; for the year 1915 those figures are these——

Senator CUMMINS: You are speaking now of earnings invested in enlargements and betterments of property, are you?

Mr. THOM: I am coming down to that figure of a balance, but I just want, if you will let me, without interrupting your examination, to put these figures in. They are as follows:

Net income from operations for the year ending June 30, 1915, from the railroads reporting to the Interstate Commerce Commission, was \$688,953,248. Income from securities owned by those railroads, \$129,374,047, making an aggregate of \$818,327,295. Out of that there was paid in interest \$463,540,666, leaving a balance of \$354,786,629. Dividends paid \$209,520,420, or 2.4 per cent on the outstanding stock, leaving a balance of \$145,266,209. It may be that balance went into improvements.

Senator CUMMINS: You understand, I assume, that those figures are not accepted generally, are they?

Mr. THOM: I do not know what you mean.

Senator CUMMINS: I mean this: that it is charged, and, I think, is rather satisfactorily proven, that during certain years of the last five the railway companies have taken from

their earnings and invested in permanent improvement of their property, aside from ordinary maintenance, a very much larger proportion of their earnings than they ordinarily do.

Mr. THOM: I had not been advised of that controversy; I had not heard of that.

Senator CUMMINS: You know, do you not, that it was very earnestly contended in the Advanced Rate Cases that the railways had unduly and unreasonably expanded their so-called "Maintenance Accounts?"

Mr. THOM: No.

Senator CUMMINS: And, in that way, had disposed of a large sum of earnings that ought to have been reported as applicable to the payment of capital—I mean, a return on capital?

Mr. THOM: I was not acquainted with that controversy. Perhaps it is as you state. I assumed that the Interstate Commerce Commission's system of accounts was intended to reveal everything that was done.

Senator CUMMINS: The figures you have just stated are taken from the reports of the railway companies, are they not?

Mr. THOM: On the system of accounts that the Interstate Commerce Commission requires.

Senator CUMMINS: I know, but that system permits of great latitude in discretion, with respect to the application of earnings, does it not?

Mr. THOM: That system reveals every cent that is spent, and the purpose for which it is spent. One thing of which we can rest assured is that there are no longer any secrets in the railway world.

Senator CUMMINS: I am not accusing the railways of anything criminal or of violating the law, but I assumed that you were familiar with the controversy with respect to the application of earnings that arose in the five per cent rate case, and in other cases, too. Mr. Thom, if investors are

frightened now about railway investments, does their fear arise from past regulation, or from apprehension with respect to future regulation?

Mr. THOM: I think it arises from both.

Senator CUMMINS: If it arises from past regulation, is it founded upon the idea that the railway companies have not been permitted to earn a fair, reasonable revenue?

Mr. THOM: I think that the public believe that regulation has been heretofore applied so as to give the cheapest possible rate, without any reference to the larger view of the public interest in a surplus fund sufficient to secure the credit of the carriers and the future supply of facilities.

Senator CUMMINS: Your answer, in a paraphrase, is simply an affirmative one to my question, is it not?

Mr. THOM: I do not know.

Senator CUMMINS: That is to say, that you have said, substantially, that the fear so far as the past regulation is concerned, arose out of unfair regulation in reducing rates or in not permitting the railway companies to charge adequate rates?

Mr. THOM: I do not use the word "unfair." I think it has been a misconception on the part of the public of the two functions of regulation. I think that heretofore the public eye has been alone upon the question of railroad abuses, the necessity for their correction, and the desirability to get the least possible rate; whereas, there has been much more involved, and that is a provision for the facilities for the future; and you cannot get them without furnishing a proper basis for railroad credit.

Senator CUMMINS: However carefully you may reflect the public opinion in the answer you have just made, it is, at the same time, a very serious impeachment upon the intelligence and justice of the Interstate Commerce Commission, is it not?

Mr. THOM: I do not intend to make it so. I think it is a perfectly legitimate comment, that that has been the conception——

Senator CUMMINS: Do you mean to say that the Interstate Commerce Commission——

Mr. THOM (continuing): —in the minds of the regulating authorities on the subject, and I am not going to be put into the position of making a criticism on the Interstate Commerce Commission unjustly.

Senator CUMMINS: I do not want you to do so, unless you mean it.

Mr. THOM: Well, I do not mean it in any sense to reflect upon them. I think it has been the spirit of regulation.

Senator CUMMINS: We selected an Interstate Commerce Commission supposedly of intelligent and patriotic men. Now, do you mean to affirm that there has been absent from their minds the necessity of the development of our railway facilities, so that the commerce of the country could be served?

Mr. THOM: I think they have not taken due care of that, nor do I think Congress has taken due care of it; nor do I think the public mind has taken due cognizance of that, and we are all justified in bringing forward any phase of an idea that we think has been neglected.

Senator CUMMINS: Perfectly justified.

Mr. THOM: And that is all I am doing. I am not doing it in any spirit of criticism or antagonism. I am doing it merely for the value of what this angle of view may be to our common destinies.

Senator CUMMINS: But, after all, your position is that the Commission to which we have delegated the power to revise rates, has failed to think of the future, and has imposed rates upon the railway companies which have driven investors out of the market; that is the substance of your position, is it not?

Mr. THOM: Well, Senator, no matter what invidious form your question may attempt to put upon my answer—and I do not think it is fair to try to put any, because I am simply here bringing forward in as considerate and as fair a way as

I can, the idea, without particularizing any part of the governmental machinery of regulation, that regulation itself has not heretofore duly considered the needs of the future——

Senator CUMMINS: Yes.

Mr. THOM: Now, I do not mean that in any sense that would be unpleasant to anybody, but I do mean it as putting before you gentlemen, charged with your responsibilities, that thought for you to see whether or not there is anything in it.

Senator CUMMINS: I can well understand how people who think on the subject superficially may not consider that phase of it, but it is utterly impossible for me to understand how a commission composed of intelligent, thoughtful men could fail to give that subject all the consideration that it deserved.

Mr. THOM: They may arrive at a conclusion, under one presentation of the subject, different from what they would under another, and their conclusion may not have dealt successfully and adequately with the public needs for the future.

Senator CUMMINS: That may be.

Mr. THOM: That would be, then, merely this: I am not going to be put in the position of attempting a criticism of the motives of that body. I have got a right to bring forward the thought that the policies of regulation in this country have not taken sufficient note of this important matter, and that is all I do.

Senator CUMMINS: But it seems to me that, in order to be——

Mr. THOM: Now, you may think that you had better just take, as a whole, what the Interstate Commerce Commission has done, and never question that, and never look beyond that, and you may say "Mr. Thom is wrong about it." I may be wrong about it, but I am bringing it forward with the proof which we will have to support it, to see whether or not I am right about it. I believe I am right about it.

Senator CUMMINS: What I am suggesting is that there is a difference between a failure to consider that phase of the subject, and a failure to deal with it adequately. Now, if you had said that the Interstate Commerce Commission had compelled the railways to render their service at a rate that will not provide for the future, that would be a mistake on their part, if true, in my judgment, as to the rates that were necessary for that purpose; but when you assert that Congress and the Interstate Commerce Commission have not thought of the future, it seems to me that is rather a serious situation.

Mr. THOM: I have not said that. I have not said that. All that I have said is that, in my judgment, whether thinking of the future or not—and, of course, they have thought of the future—that they have not given sufficient weight to the considerations which I am now bringing to your attention. Now, is not that a legitimate thing to say to anybody, of a public commission?

Senator CUMMINS: Yes, I think that is legitimate, in a way; and all that means is simply that the Interstate Commerce Commission has not permitted the carriers to charge a sufficient rate to take care of the future, and that, as it seems to me, is a peril of the days to come just as menacing as the peril of the days that are past.

Mr. THOM: Undoubtedly.

Senator CUMMINS: For we cannot do anything that will change that situation, unless we change the Interstate Commerce Commission and get other men there.

Mr. THOM: Oh, I do not think that is necessary. I think you want your law changed. I think you want the spirit of the Government defined in such a way as to bring about a confidence that the public now, as represented in its chief law-making body, appreciate conditions in a way that will insure a cordial and friendly attitude toward anything that can be justified in the future. Now, I tried to show you that the spirit of the present law was the terms that were imposed upon the vanquished, created by the victor. I think that is true.

Senator CUMMINS: You have developed the genesis or origin of regulation.

Mr. THOM: Now, I want to plead with you to get into this law an assurance of governmental attitude which will give confidence to the investing public.

Senator CUMMINS: What I cannot understand is this: How we can, by legislation, change the spirit of the people or the spirit, if you please, of the Commission. We have delegated to the Commission the authority to establish reasonable rates for the service. Now, they have gone forward, and, in so far as they have acted, they have established reasonable rates. Now, what can we do to correct the spirit of the Commission in the work that they are about to do?

Mr. THOM: I do not like you to put it in the way of correcting the spirit of the Commission: I am not making any attack on the Interstate Commerce Commission.

Senator CUMMINS: Whose spirit is it, then, you want corrected?

Mr. THOM: I am talking about your system of regulation generally, and I believe that on the lines which I have advocated here, you can put into that system of regulation certain ideas of encouragement and assurance to the investing public that will be of great benefit. Now, what good does it do to get me down to a possible criticism of the Interstate Commerce Commission? I am not assuming that position.

Senator CUMMINS: Every man has that right.

Mr. THOM: Why try to put me in that position?

Senator CUMMINS: I think what you have said is a criticism of the Interstate Commerce Commission.

Mr. THOM: So far as I have said it has to go. Why do you want to emphasize that and bring out as if I were in antagonism to them, when I tell you I am not?

Senator CUMMINS: Personally, I am sure you are not; but we cannot do any more than to say to the Interstate Commerce Commission, "Fix reasonable rates for the service rendered by the railway companies."

Mr. THOM: Yes, you can.

Senator CUMMINS: Can we say, "You can fix unreasonable rates?"

Mr. THOM: No, but you can say that certain things must be considered in fixing them. For example, here is a section of the Interstate Commerce Commission that has held distinctly that they cannot consider general conditions in this country, in fixing a rate; that they must have regard only to the particular little transactions that are before them. Now, you can say to them in your law that in fixing the level of rates in this country they must take into consideration the whole outlook; that they must regard the credit of the carriers to the extent that such a credit is necessary for them to be able to furnish the facilities, as commerce grows. You can say that. Now, that is one of the principal things we want you to say.

Senator CUMMINS: I was coming to just that point. I think the statement you just made is inconsistent with others that you have made, in this: What is a reasonable rate for the service rendered by a carrier is a judicial question finally—the elements that enter into it.

Mr. THOM: You mean judicial—are you using that term as one to be determined by the courts as contradistinguished from the Commission?

Senator CUMMINS: We will say it is in its sense judicial. If we were to say to the Interstate Commerce Commission, "Fix a reasonable rate for every service rendered by the carriers," we could not go on and say that in fixing it the Interstate Commerce Commission should fix it thus and thus.

Mr. THOM: Why? You have got a right to fix it yourself. You don't have to go through the Commission.

Senator CUMMINS: Because we cannot do anything more than to declare that there shall be a reasonable rate.

Mr. THOM: Yes, you can.

Senator CUMMINS: But we cannot declare the elements that shall make up the reasonable rate.

Mr. THOM: Not only that, but you can declare the rate.

Senator CUMMINS: We can declare the rate?

Mr. THOM: Yes, and you can tell the Interstate Commerce Commission everything that they must take into consideration.

Senator CUMMINS: Can we say to the Interstate Commerce Commission that "You shall establish rates that will pay six per cent on all of the capital stock of the railway company?"

Mr. THOM: Can you say that?

Senator CUMMINS: Would that be a lawful direction?

Mr. THOM: Oh, I think it would be entirely lawful. There is so much opportunity, you know, for making a man appear to advocate something when he says it is merely lawful, that I want it understood I am not saying that is a desirable thing to do, but I say it is a lawful thing to do.

Senator CUMMINS: Then that would take the discretion entirely away from the Commission?

Mr. THOM: You have a right to do that.

Senator CUMMINS: We have a right to establish rates?

Mr. THOM: You have a right to limit it; you have got a right to take it away.

Senator CUMMINS: So that what you really are asking here is that Congress shall so direct the Commission, that the outcome of the work of the Commission will accomplish the purposes that you have in view, and take away from the Commission its present discretion in determining what reasonable rates are?

Mr. THOM: It will not take away the discretion of the Commission, by any means, entirely, but it will introduce into their consideration certain standards, which, if Congress approves, should be made matters of consideration by them.

Senator CUMMINS: Mr. Thom, have you had any observation with regard to the disposition of investors toward the securities of other public utilities, controlled by municipalities?

Mr. THOM: Only what I have heard generally. I have not personally.

Senator CUMMINS: Has the investing mind changed with regard to them, and is it as much disinclined to invest in municipal utilities as in railway utilities?

Mr. THOM: I could not tell you that. We will have here before you witnesses to show the attitude of the investing mind.

Senator CUMMINS: What is your understanding of that attitude during the last four or five years?

Mr. THOM: My understanding of the attitude is rather indefinite on that point, and I would not care to state it, because I do not know enough about it to state with accuracy.

Senator CUMMINS: You do not know whether the utilities throughout the country, under the control of municipalities——

Mr. THOM: No, I do not know how that is.

Senator CUMMINS: —have any difficulty in financing their various enterprises or not?

Mr. THOM: I do not know. That has not come under my observation.

Senator CUMMINS: Excluding duplication, the present capitalization of the railways of the country is about fifteen and one-half billions, is it not?

Mr. THOM: I have not got the figures; I do not know.

Senator CUMMINS: Well, you know it is about fifteen billions of dollars, do you not?

Mr. THOM: I thought it was somewhat in excess of that, but I do not know.

Senator CUMMINS: I am excluding the duplication of securities.

Mr. THOM: We will accept your figure for the purposes of your question. I do not know what it is.

Senator CUMMINS: And of this capitalization, in round numbers, nine billions are represented by bonds, and six billion by stock.

Mr. THOM: Well, I haven't got those proportions, but I am willing to accept your view, because you are generally very accurate.

Senator CUMMINS: I do not pretend to be exactly accurate, because I am using simply the round numbers, but that is my recollection, and it corresponds with your idea that about 60 per cent, or a little more of the capitalization will be found in bonds, and about 40 per cent in stocks.

Mr. THOM: I have never found any difficulty in accepting your views as to the facts, Senator.

Senator CUMMINS: You said, and it is universally known to be true, that these stocks were originally issued without payment, or substantial payment to the corporations which issued them, and that they were given to those who took the bonds, as bonuses.

Mr. THOM: Not all of them, by any means. A great deal of stock has been issued at par, but there has been a system of issuing stock, as a bonus, with bonds. Now, what proportion is involved in that I do not know.

Senator CUMMINS: How much of the six billions of stock, or a little more than six billions, were issued without any substantial payment?

Mr. THOM: I do not know.

Senator CUMMINS: I am not now speaking, of course, of what the present investor paid for the stock.

Mr. THOM: I quite understand you.

Senator CUMMINS: I am speaking of the original issue.

Mr. THOM: Original issue, but I do not know the facts.

Senator CUMMINS: You do know that it is a very large proportion of the six billions of dollars, do you not?

Mr. THOM: I should be prepared to accept that, if it should turn out to be the fact. I do not know.

Senator CUMMINS: Now, is it not true that these bonuses of stocks, through which a large part of the watered capitalization was issued, were absorbed by promoters, and were

not acquired by those who actually furnished the money on the bonds?

MR. THOM: Well, it may be that that was so. I know that there was a large system of promotion, and they got, doubtless, what they asked in stock.

SENATOR CUMMINS: The original way in which it was done, as I understand it, was that the railway company, either through a construction company or otherwise, issued its bonds and stocks, and that the investment brokers or bankers got the stock together, with the promoters, and that when finally they sold the bonds to the real investor he got nothing more than the bonds. That is true, is it not, in a large way?

MR. THOM: I believe that to be true, in a great many cases.

SENATOR CUMMINS: Now, therefore, the man who really invested his money in these enterprises was not an adventurer, was he?

MR. THOM: Well, you take, for example, such a situation as this: Here is a railroad, to be built, and the contractor to build it; he undertakes to do it and to furnish the money for the bonds and the stock. Now, that money that built that railroad came in that way. Ultimately, those bonds are passed on to the public, just like the stock was passed on to the public, and the man that bought that bond is not the man that built the road.

SENATOR CUMMINS: Precisely; and, therefore, so far those roads have been built by the proceeds of bonds that have been bought by investors, who got nothing more than the bonds themselves, and could make no profit in excess of the interest upon the bonds; is not that true?

MR. THOM: I expect a great many of those men that took the bonds got stock with them.

SENATOR CUMMINS: Have you ever gone through the history of the capitalization of any considerable railway, aside from the one which you are interested in?

MR. THOM: Well, I have been brought in contact with it, and that is the way it is frequently done, for the man who furnished the money to get both stock and bonds with it—so many bonds and so much stock, as a bonus.

Senator CUMMINS: Well, that may be true.

MR. THOM: And finally that is passed along, until the man who buys the stock pays for it, and the man who buys the bonds, pays for them.

Senator CUMMINS: It is not my observation or knowledge that I have acquired, in what little study I have given to it. Notwithstanding the character of the stock—and we have just been discussing that—and the further fact that the bonds or many of them were originally issued in a dishonest way—and by dishonest I mean that the company did not get the proceeds of the bonds and put it into the property that was being built—what per cent upon the capitalization was earned by the railway companies of the United States during the last twelve months, after deducting operation, maintenance and taxes?

MR. THOM: I will get the figure and put it in the record, if you want it. I do not know. I will get it and put it in the record.

Senator CUMMINS: Is it not true that during the last twelve months the railway companies have earned net, after making the deductions I have already mentioned, more than seven per cent upon the entire capitalization?

MR. THOM: Well, without knowing the fact, and granting it for the purposes of the discussion, I do not think that that has any real bearing on what you gentlemen are called upon to decide, for the reason that I do not suppose anybody will contend that you must consider this abnormal year as a permanent situation. Certainly, investors do not. If you could guarantee always the earnings up to the present level, you would have the future very much simplified in respect to railroad matters, but nobody charged with this responsibility believes that this is a fair test.

Senator CUMMINS: I do not myself think it is a fair test, the one year alone, but if we need additional railway facilities—and I am assuming that we will need more—it must be because there will be more traffic to handle in the coming years than is handled now; that is true, is it not?

Mr. THOM: Yes, sir, but——

Senator CUMMINS: And the natural growth of commerce.

Mr. THOM: It does not mean that there will be the same relationship between the amount of traffic and the cost of the facilities. You have got always to determine that as a permanent quantity, before you can——

Senator CUMMINS: But in order to be furnished a little more information on the subject, is it not true that the net earnings of all the railway companies of the country, arrived at in the way I have suggested, deducting maintenance and operation and taxes for the last five years, has averaged six per cent upon the entire capitalization?

Mr. THOM: I should doubt that very much. I have not the figures, but I should doubt that very much.

Senator CUMMINS: You will bear in mind, of course, that the great proportion of the bonds of the railway companies bear interest at four or four and a half per cent, and if the earnings during the last five years, as an average, have paid six per cent upon the entire capitalization, the result would be that they have earned enough to pay about eight per cent upon the entire stock capitalization?

Mr. THOM: I do not believe that to be the fact, and I do not believe that the earnings have been in sufficient amount to attract the investment of the public in them. I think the fact is just the contrary, Senator.

Senator CUMMINS: Do you remember what the net earnings of all the railways were, computed in the way I have suggested, in the year 1910?

Mr. THOM: No, sir, I do not. I can get any of those figures and put them in the record, if you want them.

Senator CUMMINS: Do you know what they were for the year 1913?

Mr. THOM: I do not carry those in my head by years, I know that the percentage has been way below the necessary surplus which must be provided if you are going to attract investors.

Senator CUMMINS: Well, that is just what I am trying to find out.

Mr. THOM: We will have witnesses on the stand to give all those figures.

Senator CUMMINS: And whether the revenues have not been a little more satisfactory to the investors than you have been inclined to believe. I have asked about 1910 and 1913, because the revenues of both those years were very carefully examined into in the two advance rate cases, and I suppose you are familiar with the showing there.

Mr. THOM: You know I was not in those advance rate cases. We will have testimony on all those points before this committee. I have not charged my mind with that at all.

Senator CUMMINS: If it should turn out that the figures I have given are substantially correct you would want to revise your view of the attitude of the investor, would you not, a little?

Mr. THOM: No, sir, I would not. I think I have very certain evidence of what the attitude of the investor is.

Senator CUMMINS: One more question along that line. You know something of the history of the capitalization of the Chicago & Alton, and St. Louis & San Francisco, and the Rock Island, and the Erie, do you not?

Mr. THOM: I just know that there has been a general feeling on the part of the public that there have been very unjustifiable methods adopted about them, but I do not know the particulars.

Senator CUMMINS: You know that those companies are conspicuous among all the others for the extravagance and wildness of their capitalization, do you not?

Mr. THOM: I know they have been very much criticized, but I have never gone into those controversies at all, and I do not know about them.

Senator CUMMINS: Excluding those companies—and the standing of their capitalization in the market, I think, can be very easily explained for other reasons—is it not true that the roads which in 1913—and I think that because it is the last year for which we have any report—carried 80 per cent of the traffic earned 7 per cent and a little more on their common stock?

Mr. THOM: Well, Senator, you will have to realize, of course, that it would be necessary for me to have all of those figures and to go into them to see what the fact is, and I have not the aspect of the matter that you are now presenting and the figures before me. At the same time, I will be very glad to take it up, and to go into that, if you desire.

Senator CUMMINS: I did not know but that in looking into the disinclination of investors to loan money upon railway securities, or buy stocks, that you had examined some of those things that I am touching upon.

Mr. THOM: All those that I have examined I will tell you about, and those that I have not I will have to answer that I am doing it.

Senator CUMMINS: Do you not believe, Mr. Thom, that a very large factor in the hesitation, if there be such, of an investor to take stock in a railway company is due to the fact that he must put up his good money against the water that is represented in the capitalization of those companies?

Mr. THOM: I believe the impression among investors is that there is, practically speaking, no, or very little, water in any of those companies now. I think that they feel that just as other companies have grown up to their capitalization, that the railways have.

Senator CUMMINS: How did they grow up without the investment of money?

Mr. THOM: How did they?

Senator CUMMINS: How did this property become valuable without the investment of money?

Mr. THOM: It grows up as every other business does, by

the development of its business. The thing that makes property valuable is its capacity for earning.

Senator CUMMINS: Yes, but its earning capacity——

Mr. THOM: And here is a company that goes into an undeveloped territory, and it has a very few developed enterprises. Now, as the years go by a great many enterprises grow up along that property and they add very great traffic to it and thereby increase the value of that railroad.

Senator CUMMINS: That is, increase the earnings?

Mr. THOM: Increase the earnings——increase the value of that railroad, and that is believed by the investing public to have gone on until the railroads have grown up to their capitalization.

Senator CUMMINS: Are you familiar with the three railroads upon which the Committee on Valuation, or Division of Valuation, appointed by the Commission, has found values?

Mr. THOM: I am familiar with the results, which are not accepted.

Senator CUMMINS: You do not think the Kansas City Southern has grown up to its capitalization, do you?

Mr. THOM: Those are not accepted by the railroads.

Senator CUMMINS: I know they are not, but you do not believe that a railroad like the Kansas City Southern has grown up to its capitalization?

Mr. THOM: I do not know the exact facts about the Kansas City Southern, because I do not know about the road, but I do know that there is going to be a serious contention that great elements of value have been omitted by the valuation authorities.

Senator CUMMINS: I know of that contention.

Mr. THOM: And I believe that contention is a sound one, Senator.

Senator CUMMINS: But, after all, there are degrees in this matter, and when we reach a certain point we ought not to find ourselves out of harmony with each other. Take the

Missouri Pacific. Do you believe the property of the Missouri Pacific is worth its capitalization?

Mr. THOM: It would be the wildest guess on earth. I never was on the Union Pacific, and I do not know anything about it.

Senator CUMMINS: I said the Missouri Pacific.

Mr. THOM: I meant to say the Missouri Pacific.

Senator CUMMINS: Do you believe the Rock Island is worth its capitalization?

Mr. THOM: Senator, what basis have either you or I for that belief? I have never been——

Senator CUMMINS: Simply because its stock is selling in the market at six cents on the dollar or ten cents on the dollar or thirteen cents on the dollar. Now, you do not believe, do you, that that property is worth its capitalization?

Mr. THOM: Both of those roads are in the hands of receivers.

Senator CUMMINS: And earning more than they ever earned before.

Mr. THOM: What I mean by that, is, that while you may take a railroad here and there that is not earning enough to sustain its capitalization, that the railroads of the country, as a rule, I believe, are fully worth their entire capitalization, and I believe that if a proper element of value be allowed for, reasonably in this valuation, that you are going to see that the railroads of the country are not over-capitalized, as a rule.

Senator CUMMINS: Precisely.

Mr. THOM: Now, that is a controverted question.

Senator CUMMINS: I have no doubt that some railroads have increased in value, either through investment or development of the country, so that they are worth their capitalization, but I am sure you would not be willing to affirm that that is true of even the major part of the railway companies of the land.

Mr. THOM: I believe it to be true. Without, of course,

adequate investigation of each property, my conviction is that when you allow the proper element of value you will find the railroads of the country are not over-capitalized.

Senator CUMMINS: You mean as a whole?

Mr. THOM: Yes, I mean as a whole.

Senator CUMMINS: I venture to say that in acquiring the companies that you have combined into the Southern Railway Company, you did not pay anything like the capitalization of those companies.

Mr. THOM: That may be.

Senator CUMMINS: Why did you not?

Mr. THOM: But the association of those railroads into a useful system in the growth of business, may make those properties, and I think does make those properties, vastly more valuable now than the capitalization of the Southern.

Senator CUMMINS: But if the railroads, taken as a whole, have, during the last five years, earned substantially six per cent upon their entire capitalization—and certainly six per cent upon their stock—the situation is not so desperate as we have been led to believe, is it?

Mr. THOM: I think it is. I do not think six per cent is enough to enable them to properly operate. You must remember the difference between these properties and other property.

Mr. ADAMSON: Mr. Chairman, if Senator Cummins will kindly yield to me for a second, I suggest that the hour for adjournment has arrived.

Senator CUMMINS: I had lost all track of time.

Mr. ADAMSON: I move that the Committee now take a recess until tomorrow morning.

(The motion was agreed to, and, accordingly, at one o'clock and thirty minutes p. m., the Committee took a recess until tomorrow, Saturday, December 2, 1916, at 10:30 o'clock a. m.)

SATURDAY, December 2, 1916.

The Joint Committee met at 10:30 o'clock a. m., pursuant to adjournment, Senator Francis G. Newlands presiding; also Vice Chairman William C. Adamson.

The CHAIRMAN: The Committee will come to order. Senator Cummins, you may proceed.

Mr. ALFRED P. THOM resumed the stand.

Mr. THOM: Are you ready to begin?

Senator CUMMIN: I am ready.

Mr. THOM: Before you begin I have some information you asked for yesterday which I would like to put into the record at this point. Taking the five years from 1911 to 1915, the per cent of net income on total net capitalization was, according to the figures of our statistician, 4.56 per cent.

The CHAIRMAN: Was what?

Mr. THOM: 4.56 per cent. The per cent of total income of total gross capitalization was 4.38 per cent. As compared with the five-year period immediately before that, embracing the years from 1905 to 1910, the per cent of net income on total net capitalization was 5.25, and the per cent of total income on total gross capitalization was 5.01, showing a decline on net capitalization in the latter five-year period over the former of from 5.25 in the former to 4.56 in the latter five-year period. The per cent of total income on total gross capitalization shows a decline from 5.01 in the first five-year period to 4.38 in the last five-year period. The returns on stock, not dividends, but the total earnings on stock for the years from 1910 to 1915 were as follows:

For all roads reporting to the Interstate Commerce Commission the amount here stated as the per cent of stock is arrived at by taking the net operating income and adding to that the income from the principal securities owned, and deducting from that interest on bonds reckoned at 4 per cent. In that way the result would be as follows: Per cent on all stock for the year 1910 would be 7.09; for 1911 it would be

6.17; for 1912 it would be 4.97; for 1913 it would be 5.94; for 1914 it would be 4.06; for 1915 it would be 3.44.

Senator CUMMINS: Where did you get the statistics that you have just laid before the committee?

Mr. THOM: Mr. Erickson, who was formerly chairman of the Wisconsin Commission—until a few months ago he was chairman of the Wisconsin Commission—has compiled these statistics which I have now given you, and he will be on the witness stand to explain them.

Senator CUMMINS: Are they compiled from the reports made by the railway companies to the Interstate Commerce Commission?

Mr. THOM: Yes, sir.

Senator CUMMINS: Or are they from independent sources?

Mr. THOM: They are compiled from reports made to the Interstate Commerce Commission, and Mr. Errickson will be on the stand during these hearings to fully explain them, Senator.

Mr. ESCH: They embrace only such roads as have gross income of a million or more?

Mr. THOM: Yes, sir.

Senator CUMMINS: Your suggestion made many times—and I regard it as a very wise one—is that there ought to be, both in the adoption of the regulatory measures and in the administration of the law, a spirit of encouragement and helpfulness, rather than a spirit of hostility and repression. You have construed what has been done in the past as having been done largely in a spirit of hostility and repression. I assume.

Mr. THOM: Not only that, Senator, but I am convinced that the investing public so construes it, and we think it is an entirely philosophic growth that you can trace to reasons in the inception of the system in what has occurred to justify public indignation, and we feel at the same time we are confronted with that fact.

Senator CUMMINS: So far as Congress is concerned it has simply committed to the Interstate Commerce Commission

the authority to determine what is or is not a reasonable rate to be charged by the carriers for their services. There is nothing hostile in that regulation, is there?

Mr. THOM: No; there is nothing hostile in that regulation at all; it is a very proper regulation. But the feeling in authoritative circles—and by that I mean the men who are in position to speak for public sentiment—has been one that has caused a feeling of parsimony in the administration of those powers in respect to the matter. I would like to illustrate that——

Senator CUMMINS: That is, there has been some difference of opinion with regard to what is a reasonable return to the railroad companies for their services?

Mr. THOM: Not only that, but that question, what is a reasonable return, has been influenced, in my judgment, by conditions outside of the question itself, in such matters as this that I am about to illustrate. I am told that there is one of the States, which I will not name, but it will be named during the hearing—I am told in one of the States the State Commission, whenever it increases a rate would be met with a bill in the legislature to abolish the commission. Now, that commission was also kept on the defensive and would do whatever was done in the way of advancing rates in the most parsimonious way, and would look to the political expediency to a certain extent, rather than to the constructive purpose of guarding the future of the facilities of that country.

Now, I feel that we have gone so far in the expression of public view of these matters that we have put the hand of repression upon the discretion which has been lodged in that Commission, and it has reflected very largely a repressive spirit on the part of the people. Now, that is what I am here trying to appeal against and trying to get into a clearer atmosphere.

Senator CUMMINS: I am confining myself to legislation and the administration of that legislation. I am confining

myself at this time to the Interstate Commerce Commission and have not in my mind the attitude or the action of the State Commissions.

Mr. THOM: I quite understand, but I wanted to illustrate my view of what has happened in the regulation by the Interstate Commerce Commission of this power that you have put into their hands, and which has had the effect of not sufficiently safeguarding the future of the railroads in accordance with public requirements.

Senator CUMMINS: The State Commission regulates, at most, not more than 10 or 15 per cent of the business done by the carriers, and I leave that aside for the time being.

Mr. THOM: So do I, Senator, and what I said about that was merely trying to illustrate to you my conception of what is going on also in National regulation.

Senator CUMMINS: You know, do you not, that when the Advance Rate cases were presented, both in 1910 and 1913, and again in 1915, that a large part of the argument and a great deal of the evidence submitted, related to just the thing that you are attempting to impress upon us, namely, that the credit of the railway companies must be sufficient to enable them to go forward and develop transportation facilities?

Mr. THOM: That was undoubtedly so.

Senator CUMMINS: You know, do you not, that the final decision in the Advance Rate case rested on that ground and on that ground alone?

Mr. THOM: I do, and I know that that very thing had been attacked on the floor of Congress.

Senator CUMMINS: Undoubtedly; but you do not expect, do you, that there will be universal concurrence everywhere and with everybody, concerning governmental action. You do not expect that we will get to any such Utopia as that?

Mr. THOM: Undoubtedly not, but unless we get to the point of surrounding these properties by business, rather than political consideration—unless we rise to that point—we are going to repel investors in them.

Senator CUMMINS: But we—according to your own admission—have risen to that point already, because the most important decision of recent times, rendered by the Interstate Commerce Commission, was based upon the very proposal that you now make.

Mr. THOM: I do not think so, Senator. I think that we have not risen to it, when, on the floor of Congress, that Commission is all the time threatened with public indignation because they have done that thing, and by important men.

Senator CUMMINS: I do not know whether that be true or not. There are differences of opinion among the people with regard to the justice of that decision, and I assume that every man is at liberty to speak his mind with regard to it; but do you know of any man who has asserted anywhere that railway companies should receive less than a reasonable return or reward for their service?

Mr. THOM: No, I do not know of any man, but I know this: I know there are important men who take such a course in public life that they menace the investor with a view entirely different from that which the investor takes, and who, when anything like this happens, make it an issue before the American people, and by their standing, by their ability, they are able to make an impression on the public mind which has the effect of discouraging confidence in the stability of railroad securities.

Senator CUMMINS: But the railway companies make the same issue, do they not? They make a campaign before the American people; they put their views before the public with a great deal of persuasiveness, do they not?

Mr. THOM: Undoubtedly; I am not saying anything against the presentation of the other side. I am asking—not in a controversial spirit—I am asking whether or not an industry can stand a strain of that sort, constant agitation, most intelligently and capably carried forward. Now, can they do that and live is the question?

Senator CUMMINS: You do not hope for a time, do you, when the action of our public officials, either in legislation or in administration, will be immune from criticism or comment?

Mr. THOM: I do not look forward to that, but I am bringing to your attention, as a responsible American statesman, the fact that you are dealing with an industry that lies at the base of American prosperity; that that cannot stand the sharp controversial differences; that some way must be found to assure the public, if they are going to continue this investment, that there is a stability of public opinion behind them, and not all the time a controversial opinion—public opinion behind them.

Senator CUMMINS: You said yesterday that one of the ways in which Congress could encourage the railways and be helpful, would be to prescribe certain elements which the Commission should take into consideration, in determining the reasonableness of railway rates?

Mr. THOM: Yes.

Senator CUMMINS: And I think you expressed the opinion that there was no doubt of our authority to do so.

Mr. THOM: That is my opinion.

Senator CUMMINS: It goes without saying, then, I assume, that if we can tell the Commission that it must consider certain elements in determining what is a reasonable rate, that we can also tell it that it must not consider certain elements, in determining what is a reasonable rate?

Mr. THOM: Unless that would prevent the legitimate operation—unless your prohibition would prevent the legitimate operation of economic forces to which, as owners of the property, these people are entitled.

Senator CUMMINS: Yes; but I am speaking now of legislative power. We create a commission to determine what rates shall be; they must be reasonable. Now, it must be true that if we can state to the Commission that in determining reasonable rates it shall consider certain factors, we can also

say to it that it shall not consider certain factors; that must be true.

Mr. THOM: No; it must be true—it is true with this limitation, that you can tell them that they must not consider any factor that it is improper for them to consider. I mean by that, this: I will illustrate it in this way: Here was the Monongahela lock case. Congress undertook to have that lock condemned, and it undertook to say that there were certain things that must not be considered in that condemnation, to wit: The value of the franchise. Now, the Supreme Court said that should be considered, because not to consider it would be to take what was property, contrary to the Constitution.

Senator CUMMINS: Precisely.

Mr. THOM: Now, with that limitation you, in my judgment, have a perfect right to prescribe what shall not be considered. I say this, Senator, I say Congress has a right to prescribe a rate itself, if it is a reasonable rate; that that involves the lesser power to refer it to an administrative body to determine that question and have Congress set the standard by which it shall be determined.

Senator CUMMINS: You are undoubtedly right. Congress could prescribe a rate, subject, of course, to judicial examination, and the judiciary would not examine into the elements which were in the minds of the members of Congress when they passed a law of that character; but that is a very different thing from prescribing to a commission the elements which it shall take into mind. For instance, do you believe that we could say to the Interstate Commerce Commission that in fixing a rate for the railway, it must not take into consideration the advance in the value of its right of way?

Mr. THOM: No, because that is property and it would be forbidden by the Constitution.

Senator CUMMINS: And we cannot do it, because the Constitution protects it?

Mr. THOM: Yes.

Senator CUMMINS: That is to say, that it is a judicial question and not a legislative one?

Mr. THOM: No; it is a legislative question, within the bounds of the Constitution. I will express it this way, Senator: The Interstate Commerce Commission, or any other commission appointed by Congress, is a hand of Congress. It is a deputized authority to do the things which Congress might itself do. You can prescribe any limit on the power of that commission and place upon it any instructions within your constitutional powers. You are limited simply by the Constitution—by nothing else. You have got a right to deputize anything, except legislative power. You have got a right to deputize administrative power, and the limitation of your instruction is simply the Constitution.

Senator CUMMINS: That is, we have the right then to prescribe any element that will tend to increase the rates, but we cannot withdraw any element that will tend to decrease the rates?

Mr. THOM: Yes, you can. The very elements that I refer to might tend to decrease the rate. Those elements are not necessarily the ones that increase the rate. They are merely the declaration by Congress of the things that ought to be taken into consideration. For example, one of the things that I suggest is the right and interests of the shippers. Now, is that to increase or decrease?

Senator CUMMINS: We are talking now about reasonable rates, and if we leave out the word "reasonable" your conclusion might be true. If we should tell the Commission to ascertain what the rate should be, considering certain factors, that might or might not be valid legislation, but when we tell the Commission "You ascertain what is a reasonable rate," in my judgment, we cannot prescribe any element that judicially, or from the judicial standpoint, is not a proper element to be considered in determining what is a reasonable rate.

Mr. THOM: Senator, I am very disappointed to hear you

say so. I have profound confidence in your constitutional views, but not withstanding my admiration for them, I feel that you are without any support whatever in that proposition.

Senator CUMMINS: You have stated that in your opinion the railway companies should be permitted to earn nine per cent, and I presume that is upon their capital stock, and not upon the entire capitalization?

Mr. THOM: What I said was that it was—as I understand it, it was the general investors' view, that in order to make stock salable at par, there must be an earning power behind it, at least equal to the payment of six per cent dividends, and at least equal to the piling up of a surplus to protect it, of three per cent, which is the equivalent of what you said.

Senator CUMMINS: That is simply a paraphrase of what I have just said.

Mr. THOM: The reason I did it that way was because I wanted to paraphrase it. I wanted to put it in shape where it expressed my own idea.

Senator CUMMINS: Which is that the rates ought to be so adjusted that railway stocks can earn nine per cent, six per cent of which may be used as an annual dividend, and three per cent of which is to be accumulated in a surplus fund?

Mr. THOM: Yes, sir.

Senator CUMMINS: Now, you also said that in your opinion the rates should be so adjusted that they will represent the value of the service.

Mr. THOM: Yes; I said that that was not the view, however, that I was discussing this case on, because that does not seem to have been given due weight in the decisions of the Court, according to my very diffident and very humble opinion.

Senator CUMMINS: We must, in forming legislation, proceed upon one theory or the other.

Mr. THOM: Undoubtedly; and I have assumed in everything that I have said that you are going to put yourselves

where the courts seem to have put themselves. I wish very much that Congress could see its way to cut loose from that and to adopt this other principle, but I said that, merely because it was my cherished view of the constitutional question involved.

Senator CUMMINS: You recognize that these two proposals are entirely inconsistent with each other?

Mr. THOM: Which two?

Senator CUMMINS: Namely, the nine per cent upon the stock and the——

Mr. THOM: Undoubtedly they are.

Senator CUMMINS: —value of the service?

Mr. THOM: I wish you would discard my own views of rate-making, because they are not adopted by the courts, and the 9 per cent was on the theory that it had been adopted by the courts.

Senator CUMMINS: I think the Court has not quite said 9 per cent.

Mr. THOM: Not said the 9 per cent. What I mean is they have adopted the idea that the constitutional right is measured by a fair return.

Senator CUMMINS: Certainly, and you rather expect us to go along on that theory?

Mr. THOM: I am afraid you have got to, Senator. I am afraid you will, at last.

Senator CUMMINS: If you adopt the other theory, there is no limit upon the earnings at all.

Mr. THOM: No limit either way on the earnings up or earnings down.

Senator CUMMINS: There is a limit, if we assume that there should be simply a fair return upon the value of the property rendering the service, that prescribes a rule that people can understand.

Mr. THOM: I quite understand that, and I understand that this other view that I entertain is one that is not likely to be accepted by the general public, and therefore my testi-

mony in respect to this percentage has reference to the theory of a fair return.

Senator CUMMINS: Then confining ourselves for a moment to the theory which has been adopted by the courts and which seems to prevail in the country, is it your idea that the 3 per cent surplus should be allowed to accumulate indefinitely, or should there be a limitation upon it?

Mr. THOM: My idea is it ought to be the general rule of earnings, but in lean years you will have to go into that to pay your dividends.

Senator CUMMINS: Suppose your rates are adjusted in the lean year so you will have 9 per cent in the lean years, what would you do then with the surplus?

Mr. THOM: Senator, you are suggesting the impossible. There has never been a rate made yet that was not made in prosperous years and on prosperous standards. I mean legislatively made.

Senator CUMMINS: But you can not assert that with regard to the action of the Interstate Commerce Commission, can you?

Mr. THOM: Oh, no, because they have got to make them all right along.

Senator CUMMINS: Legislatively, Congress has never attempted to make a rate?

Mr. THOM: But if you will examine rate-making in this country you will see the political agitation about rates has arisen in prosperous years and thereupon they take the prosperous standards to make the rates accordingly and let the lean years take care of themselves.

Senator CUMMINS: However that may be, the suggestion does not appeal to the Interstate Commerce Commission, does it?

Mr. THOM: It does not, and they ought to be established on an average condition.

Senator CUMMINS: You do not mean to assert there should be no limitation upon the accumulation of a surplus, do you?

Mr. THOM: Oh, no.

Senator CUMMINS: What would be a fair, reasonable limitation from your point of views?

Mr. THOM: My point of view is, that the Interstate Commerce Commission will look over the whole situation and ought to establish a basis of earnings, about what I have said, where the lean years would decrease it, the prosperous years somewhat increase it, and where we will realize that that surplus will necessarily go to build up and strengthen the transportation systems of the country.

Senator CUMMINS: Do you mean to use the surplus that you accumulate in that way in the development of the property, or hold it for the purpose of paying dividends in the lean years?

Mr. THOM: I think that two things ought to be considered; a proper provision to make up deficiencies in dividend ought to be provided for and the balance put into the property.

Senator CUMMINS: Why should any of it be put into the property?

Mr. THOM: Simply because the people that own the property are perfectly willing and content that a proper proportion be applied to the upbuilding of the property.

Senator CUMMINS: They contribute we will say 3 per cent this year, and then next year you will not earn another dividend of 6 per cent upon the surplus that you have invested in the property. That is not fair regulation, is it?

Mr. THOM: I think when the money is earned it becomes the property of the stockholders.

Senator CUMMINS: But in fixing the rates, you are, as I understand you, suggesting that if the stockholder has 6 per cent every year he will be satisfied?

Mr. THOM: If he is certain of it.

Senator CUMMINS: And that the 3 per cent surplus, or whatever surplus is fair, is intended to guard against a year

in which the earnings will not pay the dividend of 6 per cent?

Mr. THOM: Through a series of years.

Senator CUMMINS: It you invest the surplus in the property then it is not available for the purpose of paying dividends, is it?

Mr. THOM: No, not if you invest it all; therefore I suggest the right way, for wise business management is to accumulate a certain amount in cash necessary for that and to put the rest back into the property.

Senator CUMMINS: You do not expect the rate payers in this country to build up the property, accumulated in the way you have suggested, and then pay interest upon the value of the property that is built up in the way,—you do not expect that, do you?

Mr. THOM: No, what I expect is this. I expect that the public, when they commence to consider the question, will say that the greatest public interest is in adequate transportation facilities and adequate all the time; that therefore they have got to permit such a basis of earnings as will attract the new capital necessary for that purpose, and I do not expect the rates that will be permitted to be charged will allow an undue accumulation. We need not discuss the question on anything else except principle, because you are not going to state in your law how much shall be allowed. You are merely going to try to safeguard certain public purposes, and that standard will be accepted by your deputy, the Commission, and will be applied in its discretion to carry out that purpose in different ways at different times.

Senator CUMMINS: You agree then that the surplus is really to protect dividends and ought not to be used to build up the property upon which another return is to be expected?

Mr. THOM: Well, I did not say that, Senator.

Senator CUMMINS: We will pass that if you do not agree to it.

Mr. THOM: I think it would be wise business management of those matters.

Senator CUMMINS: You recognize that a very large part of the business of the country is competitive among the railroads, do you not?

Mr. THOM: A very large part is.

Senator CUMMINS: And you recognize that rates, which do carry competitive business, must be the same rates?

Mr. THOM: Undoubtedly, they ought to be.

Senator CUMMINS: You recognize also that there are companies which can do business, serving competitive territory, accumulate 9 per cent upon their stock every year, that will put the competitive company into bankruptcy?

Mr. THOM: And therefore I have——

Senator CUMMINS: No, not "therefore," but I ask you if you do not recognize that to be true.

Mr. THOM: Yes, but I suppose I am entitled to make not only a categorical answer but an explanation, Senator?

Senator CUMMINS: Yes, but I should like to know whether you recognize that to be the situation?

Mr. THOM: That is a possibility and therefore I say it is exceedingly wise on the part of the Interstate Commerce Commission, when it applies the principle of a return on the property as a standard of what the Constitution requires, to take an average condition and deal with it, as it did in the Eastern rate cases.

Senator CUMMINS: Yes, but what I have just suggested is really one of the insoluble problems in railway regulation, is it not?

Mr. THOM: I thought the Commission had probably dealt with it pretty well in that case, in the way of a solution.

Senator CUMMINS: I know of a situation, and you do, too, you know a good many of them, where two railroads given the same rates, one of them will earn 25 per cent on its capital stock and the other one will not earn any-

thing, and they do competitive business, and they serve a competitive territory.

Mr. THOM: That is a very possible situation.

Senator CUMMINS: What are you going to do with a situation of that kind?

Mr. THOM: You are going to deal with it in a broad comprehensive spirit of recognizing the real situation and try to apply business principles to it instead of political principles.

Senator CUMMINS: That does not mean anything to me, those generalizations. We have either got to allow one railroad to earn a very large return, or we have got to destroy the other railroad.

Mr. THOM: Then the question would come up, as I suggested, using business discretion about it, the question would come up whether or not there is any wrong done the public in the rate which makes this large earning for the big company. If so, if no wrong is done it, then the fact that its earnings are very great ought not to be objected to if this class of property is to retain public favor, or have public favor.

Senator CUMMINS: I want, Mr. Thom, to discuss with you a moment, or ask of you a few questions with regard to Federal incorporation. You answered Mr. Adamson, and I think correctly, that a State corporation had a right to enter a State foreign to its domicile without the consent of the latter in order to engage in interstate business?

Mr. THOM: Yes, provided it can find a method of doing it.

Senator CUMMINS: The general rule is that a corporation organized in one State cannot enter another without the consent of that other; that is the general rule, is it not?

Mr. THOM: Yes, it is.

Senator CUMMINS: There are two exceptions to that, as I remember the law, although I am a little bit rusty in the law now, and the two exceptions are these: If the corporation is about to perform a Federal function, a general function, it can go in without the consent of the State, or if it is to

engage in interstate commerce, it can go in to do that commerce.

Mr. THOM: Now, Senator, on that general principle I am in entire accord. Here has always been my difficulty on that point. Suppose we have a railroad chartered by the State of Georgia, authorized to do an interstate business, and that railroad wants to acquire a right of way in the State of Alabama, and the State of Alabama will not give its consent. Now I have never been able to exactly reconcile it to my mind how, in the absence of congressional legislation on the subject, that corporation, chartered by the State of Georgia can go in and obtain a right of way in Alabama against its consent. On the other hand, suppose there is a mercantile concern in the State of Georgia that wants to do an interstate business. It does not require the obtaining of any right of way to do that business and they can send their agencies there and do it without the consent of Alabama. But have you ever considered it from the standpoint of acquisition of right of way?

Senator CUMMINS: Yes, but my question did not involve that feature of it. I do not believe a foreign corporation can exercise the right of eminent domain within a State without the consent of the State within which the power is to be exercised, but, of course, Congress could give a State corporation the right to exercise the power of eminent domain in that State.

Mr. THOM: I think so. You mean engaging in interstate commerce?

Senator CUMMINS: And that Congress could give to a corporation, organized under its own laws, the authority to take property for a public purpose in any State?

Mr. THOM: Yes, sir.

Senator CUMMINS: In order to carry on interstate commerce?

Mr. THOM: Undoubtedly.

Senator CUMMINS: Do you believe that Congress could

give a Federal corporation the right to enter a State and do intrastate business without the consent of the State?

Mr. THOM: Undoubtedly, I do.

Senator CUMMINS: It has never been so decided, has it?

Mr. THOM: Oh, no. Here is what I mean, I mean that a Federal incorporated company to do an interstate business can be permitted by Congress to go into a State and do a local business just as much as the United States can permit its banks to go into a State and do an interstate business.

Senator CUMMINS: I do not want to bring the banks in because that rests upon an entirely different proposition, in my judgment, but I do not believe that a corporation, organized under the State of Illinois, can come into the State of Iowa and do what is known as intrastate business without the consent of the State of Iowa. I do not believe that a Federal corporation can enter the State of Iowa and do an intrastate business, whatever that may be. If there is no such thing then the difficulty disappears—without the consent of the State, and it is upon that point that I should like your opinion.

Mr. THOM: Senator, I take occasion again to say, as I have said often in your presence and outside of it, I understand and appreciate your constitutional conception and therefore I am diffident in expressing a view at this time that has not been confirmed by Congress. But I feel, undoubtedly, that Congress possesses that power. I have instanced the state of the banks, which you think rests on a different principle, but it seems to me the principle underlying both of those cases is the same. Now here is a Federal purpose; the establishment in the one case of a bank, in the other case of interstate carriers. It is to carry out one of the constitutional functions of the Federal Government in both cases. In order to do that those two companies, the banks on the one hand and the railroads on the other, must be permitted to enter into the entire field of commerce. To say that the Government of the United States is confined by its agencies to do an interstate business by the corporations which it finds

necessary in the public interest to create, is to hamper the United States Government by taking away from it 15 per cent of a real field of commerce. Now, in my judgment, they cannot exclude the States from doing that. The States can build as many railroads and allow as many governmental agencies as they please to do intrastate commerce, but the States have no right to assent or dissent from the power of the Federal Government to engage in the full field of commerce any more than they have the right to say that this national bank shall come here and that it can do business that is interstate in character, but that it cannot do business that is State in character.

I believe both of those things are an essential element of sovereignty which the States have agreed should, in their interests, and in their behalf, be vested in the impartial hands of the Federal Government, and that that cannot be subject to be crippled by withdrawing from them any proper element of commerce when they undertake to do any other portion of commerce.

Senator CUMMINS: I do not intend to conduct an argument on that point with you, but I feel great doubt about it. I think the right to incorporate a bank, in order to carry on a governmental function, is one thing. Our right to regulate commerce among the States is quite another, and I am not now trying to settle what is so connected with interstate commerce as to bring it within the Federal jurisdiction, but I am assuming there is something outside. Now, I am not able to see how we can authorize a Federal corporation to do that thing outside, under our power to regulate commerce between the States.

Mr. THOM: Senator, what do you regard as the constitutional basis for the power of the Government to establish national banks—what provision of the Constitution?

Senator CUMMINS: I would simply have to quote from McCullough against Maryland.

Mr. THOM: What did that case say?

Senator CUMMINS: There is no use of my quoting—

Mr. THOM: What did that case say was the function of the Government to establish Government banks?

Senator CUMMINS: To carry on business, create business—Government business.

Mr. THOM: In other words, we all have to admit——

Senator CUMMINS: And some people have thought——

Mr. THOM: We all have to admit that there is no clause in the Constitution to which you can assign the governmental power to establish banks, as distinct as the commerce clause. You have to hunt all over and find some possible basis for it.

Senator CUMMINS: That is true, but the commerce clause is limited. The other is not.

Mr. THOM: Yes——

Senator CUMMINS: The commerce clause is limited to a certain kind of commerce, and we cannot authorize a Federal corporation to do anything that is not in and of itself a regulation of commerce among the States.

Mr. THOM: Yes; but the other is not limited, because you cannot find it in the Constitution. You can find this in the Constitution—here is an exercise of a governmental duty, found on the face of the Constitution, with respect to interstate commerce. We all admit—at least, I am sure you and I do—that Congress had the Constitutional power to incorporate an agency to carry that on. Having done that the law will never permit that agency to be crippled and to have its power destroyed—the exercise of that power to be made unavailing, by withdrawing from it the support of any portion of commerce that is usually carried on by some carrier.

Senator CUMMINS: All of that is based on your general proposition, which may or may not be well founded, that because the revenue derived by a carrier from intrastate business may be less than a proper revenue for the service, and thus a burden imposed upon interstate commerce, that must be borne by the interstate rates, brings the whole subject under Federal jurisdiction.

Mr. THOM: I think so, and I suppose what we are now discussing is academic rather than practical, for the reason

that, doubtless all of us will agree, no State would prevent an interstate railroad, simply because it was chartered by the Federal Government, from doing intrastate business there. It would be glad to have it do so.

Senator CUMMINS: It arises in this way: I assume that if we incorporate railroads, we will, at the same time, group them through the Interstate Commerce Commission, and the corporation which we authorize will acquire the property of this group of railways. That seems to be reasonable.

Mr. THOM: I do not think that is the wisest way to do it. It may turn out that that is, but that has not so appeared to me.

Senator CUMMINS: Don't you think it is about a fair thing for the Federal Government, if the Federal Government were to acquire the railroads, to pay their value——

Mr. THOM: I did not quite catch that question.

Senator CUMMINS: Undoubtedly we can give the Federal corporation the right to condemn.

Mr. THOM: Undoubtedly.

Senator CUMMINS: Now, suppose it should go on and condemn properties of which it is to become the owner. What would be the measure of the condemnation?

Mr. THOM: What would be the measure of value?

Senator CUMMINS: The measure of value.

Mr. THOM: What the property was worth to the person whose property was condemned.

Senator CUMMINS: Not what the property is worth—not what it is worth to the owners of the condemned property, but what the property is worth. That means the acquisition, by the new company, of property at its fair and reasonable value.

Mr. THOM: The Supreme Court has determined that that value must be considered in respect to the person whose property is condemned.

Senator CUMMINS: The kind of property taken and the service——

Mr. THOM: No, the value to the owner of it, for any legitimate purpose.

Senator CUMMINS: That has always been the rule in respect to any property.

Mr. THOM: That is what I say. It must be taken with reference to the value of it to the person who owns it.

Senator CUMMINS: In that way we could establish a capitalization that represented the real value of all the properties, could we not?

Mr. THOM: Oh, we could—you would not have to pay for anything except value.

Senator CUMMINS: Would you be willing to co-operate in that plan?

Mr. THOM: My judgment is that the only wise course for the American Government to pursue is to regard—unless they want to upset the very fundamentals of healthy conditions in this country—is for the American Government to realize that certain things have happened in this country, and you must deal with that status as it is. Some men say there is watered stock. Other men say there is no longer any watered stock, that values have grown up to them. I do not believe that you can, without creating an upheaval that is not in the public interest, disturb that situation. You must safeguard the future, but deal with the past as it is.

Senator CUMMINS: Your plan absolutely involves the recognition of all stock now outstanding in the railroads?

Mr. THOM: There is one way you could provide for that, that is open for you to provide for.

Senator CUMMINS: There is your difficulty. You will never be able to establish, in my judgment, the securities, and especially the stock securities, of railway companies, until the people understand that those securities are practically the measure of the value of the property which they represent.

Mr. THOM: Now, the only way I think you are going to get at that, if there is any reason for dealing with it from that angle, would be to issue stock without par value, to the

present holders, share for share, so that their relative interest in whatever the assets are shall be maintained, but without expressing it in dollars.

Senator CUMMINS: That would be done anyhow. Suppose the Government organized a corporation and that corporation proceeded to take over the property of the Southern Railway Company. It would ascertain its value, according to the principles which the courts all recognize, and having ascertained its value, it would pay the Southern Railway Company the sum of money so established, and that money would be distributed among the present owners of the Southern Railway, according to their holdings.

Mr. THOM: You mean that in the case of Government ownership it would do that?

Senator CUMMINS: No, I am speaking of the Federal corporation.

Mr. THOM: I do not think that is the way.

Senator CUMMINS: But it is a way, is it not?

Mr. THOM: Oh, that is a way; but I do not think that is the way.

Senator CUMMINS: Then, we would have the Southern Railway Company under Federal law, with its value ascertained, and with stock and bonds outstanding representing that value. Then you have a basis, in the markets of the world, for the establishment of credit.

Mr. THOM: I think that you do not properly estimate the peculiar value of what you are there suggesting, Senator. I believe that this thing is a tremendous step; that it has got to be taken with wisdom; that it has got to be taken with the purpose of disturbing, the least possibly, the present financial conditions of the country and of the world, and that the way to do it is to provide that after a certain date no corporation shall engage—no railroad corporation—shall engage in interstate commerce unless it takes out a Federal charter; thereby you open the way by which a Federal charter may be secured, and provide that that shall not affect the bonded indebtedness, other indebtedness, or stock ownership of the

existing corporation, but that the present securities outstanding shall represent the corresponding interests in your corporation. You would say from the point of view which your questions now indicate: We have thereby not dealt with the purpose to squeeze water out of existing securities.

Now, I say that the only way in which you will ever succeed in doing that at this time, if you find with your conception of public duty it is necessary to be done, will be instead of issuing \$100 shares in the new company for \$100 shares in the old, you issue a share in the new for a share in the old and not express in the new company value at all. It is as if you and I and other members of this committee, ten of you and myself, owned a farm, we would each have a one-eleventh interest. We might divide that, put it into a corporation, and each one of us would have eleven shares of stock and each one take one. Now, there would be no value attached to that except what could be gotten out of the farm, but we would all have an eleventh interest. Now, that is a method that you might consider.

Senator CUMMINS: I recognize that it is a method. That simply deludes the country, that is all. It avoids realization of the fact that the value of the property is less than the capitalization.

Mr. THOM: No; it does not say anything about values. It just puts a share of ownership——

Senator CUMMINS: Precisely, but when the Commission, in its authority, comes to fix the rate or rates for that property, the value of the property will be taken as a basis for those rates. They are engaged, now, in valuing the railroads for that very purpose, and inasmuch as we are not going to fix rates upon any other basis than the value of the property, why not come down to the proposition and allow our capitalization to represent the real value of the property?

Mr. THOM: Why, Senator, I believe under the present decision that the ultimate criterion of rate-fixing is value,

not stocks and bonds. In other words, I am agreeing with the proposition that you have just announced to that extent. Now, I say the reason why you cannot adapt the capitalization to value, unless it is done already by the correspondence between the two, is because you would be undertaking a task which would result in the financial ruin of the world. You would be trying to take hold of values which had been bought and had been distributed among the innocent investing public, and trying to affect those values, and you cannot do it by the power of Government without an upheaval that it is not in the power of Government to stem.

Senator CUMMINS: I think possibly you do not take into consideration all the factors. This stock is now discredited. This stock is now hocked upon the market for a fraction of its par value. Now, if it is made to represent the real value of the property out of which it is issued it will assume then a par value, or ought to. The only difference is this—and I may be permitted to suggest it—you are hoping all the time, or at least some people are hoping all the time, that these stocks that are now comparatively worthless in the market, will, by some necromancy, be allowed to grow into a par value, and in that way apparently nothing is taken from the stockholder.

Mr. THOM: Do not talk about necromancy, please, Senator. Use some other term than necromancy. By some economic growth.

Mr. ADAMSON: Legerdemain.

Senator CUMMINS: If it is by legitimate economic growth, then the new stock that would be issued, that would represent the real value of the property, would correspondingly raise the value.

Mr. THOM: Undoubtedly, but you never would be able to impress the man whose stock is taken in that way with the fact that you are not making war on him, and you are

going to disturb the financial confidence of the world by doing it.

Senator CUMMINS: Well, I do not think it would myself. I believe that it would be a very healthful, but somewhat painful, surgical operation, and the sooner it is performed the sooner the patient will recover. I have a great deal of sympathy with your general plan.

Mr. THOM: I know you have, Senator.

Senator CUMMINS: But I think when you base it upon the legalization and the perpetuation of all the securities that are now outstanding, you have raised up an obstacle which you will never be able to overcome.

Mr. THOM: Well, I do not know. I want you to understand that in every view I have presented I have presented it to be tested by the public interest, and by the wisest sort of statesmanship of this country. I have not presented, in any way, a view which I am not willing to submit to that kind of a test, and where I am wrong I would be greatly delighted to have wiser people set me right.

Senator CUMMINS: I am afraid that your mind is like many another—possibly like all others—somewhat difficult to convince.

Mr. THOM: That is mostly the case, we find, when we get with men with strong convictions.

Senator CUMMINS: That is all I care to ask, Mr. Chairman.

The CHAIRMAN: Mr. Esch, will you proceed with the witness?

Mr. ESCH: Mr. Chairman, I hope that both my cross-examination and the answers thereto will have good terminal facilities.

Mr. Thom, has the Supreme Court always followed the same policy with reference to determining the reasonableness of the rate and the fair return to the carrier, or has there been an evolution in the court in recent years on that subject-matter?

Mr. THOM: I think there has been a partial evolution. I do not think they are yet committed finally to any opinion on that subject, although I think it is fair to state that, in dealing with an entire situation, they have endorsed the idea of a fair return.

Mr. ESCH: You are familiar with the Granger case, known as *Munn vs. The State of Illinois*. If I recollect rightly, that decision was to the effect that the courts would not go back of a rate fixed by the legislature even though such rate brought no profits whatever.

Mr. THOM: They have abandoned that whole ground. They did announce that proposition in the *Munn* case. That was in 94 U. S., and then, I think in 118 U. S., they abandoned that whole principle.

Mr. ESCH: But in the next step in this evolution, in the case, I think, of *The Covington and Lexington Turnpike Company vs. Sandford*, they held that the governing body would not be responsible for the amount of profits, and if any profits could be shown by the public utility, that would satisfy the legislative judgment.

Mr. THOM: Yes, they went through that stage that you have just alluded to.

Mr. ESCH: Then came the famous Nebraska case of 1897, *Smythe vs. Ames*, which determined, what you have announced several times, the fair return upon the actual property devoted to public use.

Mr. THOM: Yes, sir. Of course there was also the Wabash case, you remember.

Mr. ESCH: Yes, but *Smythe vs. Ames* is the outstanding case, is it not?

Mr. THOM: Undoubtedly.

Mr. ESCH: And in that they went further and said that in consideration of the reasonableness of a rate the value of the stocks and bonds might also be taken into consideration, together with eight or ten other different elements of value.

Mr. THOM: That was one of the factors that they mentioned that would probably be considered in *Smythe vs. Ames*.

Mr. ESCH: So that showed an abandonment of the doctrine in the case of *Munn vs. Illinois* and also the Turnpike case.

Mr. THOM: In other words, the abandonment of the idea that the legislative discretion was without limit?

Mr. ESCH: Yes.

Mr. THOM: Yes, but that had been abandoned, Mr. Esch, before that.

Mr. ESCH: It is a leading case?

Mr. THOM: Yes, it is a leading case.

The CHAIRMAN: What case is that?

Mr. THOM: *Smythe vs. Ames*, in 169 U. S.

The CHAIRMAN: You say it was abandoned in 118 U. S.?

Mr. THOM: Yes, the principle of the case of *Munn vs. Illinois*.

Mr. ESCH: But in the case of *Willcox vs. Consolidated Gas Company*, which is a more recent case, they there held they were entitled to a fair return, and said, I think, that seven per cent was a fair return.

Mr. THOM: My recollection is they said about six. I would not be certain.

Mr. ESCH: Which has been followed by one or two subsequent cases along the same line.

Mr. THOM: Yes, sir; the *Knoxville vs. Water Company* case, was one.

Mr. ESCH: In that *Wilcox* case did they not also state that the value of the franchise must be considered as part of the assets in determining the reasonableness of the rate?

Mr. THOM: That is my understanding.

Mr. ESCH: Is it your opinion that in fixing rates through government agency for public-utility bodies, that the franchise should be considered as an element of value?

MR. THOM: I think we would have to find out what you mean by franchise. I think you have got to take the whole property as a going concern and with the right to go and to earn in that field, and if the right to go and earn in that field is a franchise then I think you must do that—take that into consideration.

MR. ESCH: Here is a grant by a legislature, for instance, for a railroad to construct a line. That grant, of course, implies the right of eminent domain, which is part of the sovereignty, and the grant is free. That grant is valuable. Shall the corporation be permitted to have valued a franchise which it has got free in fixing the reasonableness of the rate charged to the people of the sovereignty which granted it?

MR. THOM: Unless the right to do that is qualified in the grant.

MR. ADAMSON: Mr. Esch, do not the various States regard that as taxable property, the franchise itself, and do they not tax it?

MR. ESCH: It depends upon the different States.

MR. ADAMSON: Some of them do?

MR. THOM: Yes, it is universally done. The franchise is universally considered an element of value. Mr. Esch, suppose we have this situation, which is not uncommon in the western roads, of having large land grants made to railroads in order that they shall be built. The Government was confronted with the question whether or not it was more valuable to the Government to own these lands, in the condition they then were, or to give them to the railroad company, which would undertake to build its railroad, and in the case of a land grant the Government determined that it was a wise thing to do to give the land and to get the railroad.

Now, I have never seen any principle which would deny to that railroad company the full enjoyment of these lands as much as if it had bought them.

It did not pay in money. It did pay in carrying out its contract to build the road, but if it paid nothing—a gift to me—if you gave me a farm out in Wisconsin—the State of Wisconsin—neither the State of Wisconsin nor this Government can take away from me that farm, any more than if I had bought it from you. It is my property by a lawful system of acquisition, and, consequently, it seems to me that the true principle is to determine what the property is, not its method of acquisition, and that is as Judge Adamson has just suggested, that principle is almost universally recognized in a legitimate application of the governmental power of taxation. That is true in every State that I am acquainted with. They do tax this franchise of the railroad company which is given by the State and one State taxes the franchise which was derived from another State.

Mr. ESCH: Do you know what State that was?

Mr. THOM: Well, if you take the Southern Railway Company, that entire franchise was given by Virginia. There is not a State in which the company runs that does not tax a part of that franchise.

Mr. ESCH: Do you know in the Spokane Rate case, when the questions of the rates over the Great Northern and Northern Pacific were involved, whether or not any allowance was made for the fact that the Northern Pacific had a tremendous land grant and the Great Northern had none?

Mr. THOM: I do not know how that is. I don't remember. I wish you would tell me about that.

Mr. ESCH: No; I asked for information. You stated that economists and experts in railroad matters recommended that there should be the ratio of 60 per cent outside to 40 per cent inside capital.

Mr. THOM: I said that is what I believe to be the rule. We are going to develop that by having people here to testify about it. Now, I understand that there is some difference of opinion. Some people think it ought to be

made as high as 35 or as high as 45 or 50 per cent of inside capital. I believe you are going to find it to be 60 and 40, as you have mentioned.

Mr. ESCH: You have said that the New Haven Road sought to issue something like \$67,000,000 of securities; that Rhode Island and Connecticut assented; that the Public Utilities Commission of Massachusetts, while approving, denied its right under the statute of Massachusetts.

Mr. THOM: That was its power, under the statute of Massachusetts.

Mr. ESCH: Do you know whether that was because there was any provision in the law with reference to this ratio of outside and inside capital?

Mr. THOM: No; on the question of whether or not they could issue convertible securities, under the laws of Massachusetts.

Mr. ESCH: That question, then, of security was not involved in denying the issue?

Mr. THOM: Of the proportion?

Mr. ESCH: Of the proportion?

Mr. THOM: No; that was not involved.

Mr. ESCH: Had it been involved, do you think it would have been a righteous denial?

Mr. THOM: You mean if it had been involved?

Mr. ESCH: The proportion had been destroyed.

Mr. THOM: The proportion had been destroyed? I think, then, the question, Mr. Esch, would have been this: Do the public interests require our approval of a plan which will violate that rule of safety, in order to obtain an immediate supply of facilities, or must we adhere to this rule of safety, even though it is a denial of facilities which the public at once requires; and I can very readily see that if I had been on the Commission I would have violated the rule of safety in order to supply the facilities.

Mr. ESCH: Do you think that would be a safe rule of action?

Mr. THOM: No, I do not, but I think it would be a risk, which, in some emergencies, it would be necessary to take. It is a question, then, of judgment, one side or the other of the question.

Mr. ESCH: You have stated, and others have frequently stated, that one purpose of Federal incorporation on the part of common carriers doing interstate business, was to avoid the embarrassment in connection with 49 masters. What railroad system in the United States crosses more than fifteen State jurisdictions?

Mr. THOM: I do not suppose that any of them cross more than fifteen. There may be one or two.

Mr. ESCH: Is not the Southern road one of the most extensive in that regard—possibly the most extensive?

Mr. THOM: I do not think the most extensive. The Southern road operates in eleven States.

Mr. ESCH: And with the Interstate Commerce Commission that would make 12 masters?

Mr. THOM: Yes.

Mr. ESCH: And it may be said, therefore, that in no contingency could there be any railroad that would be subject to possibly more than fourteen or fifteen?

Mr. THOM: I think that is so; but in speaking of the whole country, all of the railroads of the country are subject to 49 masters, and in this sense each railroad is; of course, a railroad is interested in the carrying of traffic which does not originate in the States through which it runs and also in the terms which are imposed by law. Now, the payment for its participation in that traffic is determined by what the regulating power fixes, and that regulating power, in fixing the rate across the continent, therefore, has to assume a burden for interstate commerce, which is created by reason of the non-participation of any one of 48 States, to a proper extent, in the maintenance of transportation facilities, up to the standard of the national judgment. The Interstate Commerce Commission, when called upon to fix

a rate on citrus fruits, from California to New York, ought to take into—if it is going to properly safeguard the public's real interest in fixing those rates—ought to take into consideration the proper development of the transportation system, up to the point of the public's needs, and provide that that standard shall be maintained; but here we come across perhaps some other State—some State anywhere in the United States that has the policy of non-contribution to such a standard. Now, manifestly, that puts a burden on the interstate carrier, and in that sense each one of the railroads is subject to the varying policies of all the 48 States.

Mr. ESCH: I do not want to repeat a question that has been put, and hence there is not much sequence to my interrogatories, but on the question of taxation, in your judgment, under your plan of Federal incorporation, would it be wise and practicable for the Interstate Commerce Commission or a like body to fix the unit or standard of taxation, leaving the application of that to the individual States?

Mr. THOM: I know we are dealing, Mr. Esch, when we come to taxation, with an extremely sensitive unit, and, therefore, what I would advocate, and what I think wise may be two different things. I think that every man in dealing with a practical situation, has got to consider, in what he advocates, what is reasonably practicable under the conditions which confront him. In dealing with a question of philosophic consistency and propriety in a distribution of governmental power, the mind may arrive at entirely different conclusions. Now, philosophically considered, from the standpoint of a perfected system, there is no doubt in my mind that the wisest course in dealing with the public interest in respect to these transportation companies, is for one authority to have control over everything that goes to their vitals, and, therefore, in the question of taxation, the power of taxation constitutes one of those things. In an ideal State, where it is possible for a man to exercise his judgment, undisturbed by forces which the statesmen see

exist in society—the ideal way would be to declare the principles, as Marshall did, that the power to tax is the power to destroy, and, therefore, must be controlled by the responsible governmental agency; but I do not think that situation is a possible one. I believe that the United States must, in considering the sensibilities and the needs which the States now have, based upon their possession of this asset for taxation of the system of government they have established—I believe they have got to leave that taxing power with them, because of these practical conditions to which I have alluded.

Mr. ESCH: Of course, if that be true, that would permit one State, by raising an excessive rate of taxation, practically burdening interstate commerce and hence burdening the people of another State.

Mr. THOM: Undoubtedly.

Mr. ESCH: Then that would be simply a repetition of the same difficulty with reference to the rates?

Mr. THOM: Except it should be a different—very different in its bearing and importance. Now, the United States Government, while showing its deference to State conditions, would not deprive itself of the ultimate assertion of the taxing power as an entirety, if it found that it was necessary. My hope would be that it would not be so exercised by the State as to make that step necessary for the National Government to take, but the National Government would be in a position to take it any time, when one of the States would be so oppressive in its policy to another State as to make it necessary in fairness.

Mr. ESCH: If the Government could fix the standard or unit of taxation, and leave to the State the application of it——

Mr. THOM: I would think that that would be a consummation greatly to be desired.

Mr. ESCH: As it is now, different States have different statutes for taxation.

Mr. THOM: Undoubtedly; and if it is a practical thing to do, nothing could be of greater value. I do not mean nothing, but I mean there are few things that could be of greater value.

Mr. ESCH: You have stated repeatedly that 15 per cent of the traffic of carriers is intrastate. How is it possible for the rates on so small a percentage of total traffic, imposed by a State, to seriously affect interstate commerce?

Mr. THOM: Because the margins are so small that every burden anywhere has to be absolutely watched. The system of regulation has gone to the extent of cutting down every margin so close that the least cut anywhere else is felt, and when you affect the revenues on 15 per cent of your business, you are affecting a very substantial part of it.

Mr. ESCH: Well, the complaint is that the intrastate rates are too low; is not that the truth?

Mr. THOM: That is, in many cases, true. They differ materially. I know two States—if you will allow me to say so—that join; they touch each other, and the rates in one of those States is incomparably higher than in the other.

Mr. ESCH: On the same commodity?

Mr. THOM: On the same commodity, for the same service, and that State with the high rate is bearing the burden of the State across the border and is helping to bear the maintenance of a system of interstate commerce. There is one member of this committee whose State is in that condition.

Mr. ESCH: Well, is it not also true that there are some intrastate rates that are higher than interstate rates on the same commodity?

Mr. THOM: Yes, and there you have to take this into consideration. Of course a State haul, as a rule, is the short haul. A large part of the expense of rendering that service is in the terminal service at one end and in the terminal service at the other. If those expensive terminal services are spread over a very long movement they will become less serious, but where you spread them over, in the certain case of a

mile or two, or of a few miles, they become very serious, and therefore the contention has always been that the cost of the short haul business is so much greater than the cost of the long haul business that the rates ought to be very considerably higher for the short haul business, and you frequently find the rates in the State where they are actually higher than in an interstate movement, and yet that level is not high enough to sustain the increased cost of doing that business, and the cost of doing the short haul business is thrown on the long haul by the injustice.

MR. ESCH: Can you quote any statistics as to the amount in tonnage and receipts of intrastate business and the amount of the reduction of the rates, intrastate compared with interstate on the same commodities?

MR. THOM: We are trying to have developed for your information the percentage of the traffic of the country that is interstate and that is intrastate. I had not yet undertaken the other phase of the matter suggested in your question, and I have not any data on that subject.

MR. ESCH: Can it be secured without considerable trouble?

MR. THOM: I do not know. We will see. We will refer it to our accountants and see whether that can be obtained, and if so it shall be done.

Now, I should like right there in respect to that percentage to show how different are the interests of different States in that question of interstate and intrastate business. You take the State of Indiana, I am told the intrastate business of Indiana is 7 per cent only; that the interstate business of Indiana is 93 per cent. Now the explanation of that is that the producing public of Indiana is dealing with markets of other States or with foreign countries. But take a State like Pennsylvania, there they have got tremendous markets in Pennsylvania. There is Pittsburgh and there is Philadelphia, merely to mention two of them. There is a tremendous movement intrastate in Pennsylvania. You go and get your coal and your minerals and your farm products in Pennsyl-

vania and they have right within that State, and other States, the markets to consume a very large proportion of them, and therefore there is a tremendous intrastate movement there. But take the little place where I was born, which is so small a place that some people wonder in looking on the map whether it is inhabited. It is two counties of Virginia lying between Chesapeake Bay and the Atlantic Ocean, and our markets are Philadelphia and New York.

Mr. ADAMSON: What is the name of your town?

Mr. THOM: I was not born in a town; I was born just as far in the country as anybody. I was born in Northhampton County, Virginia.

Mr. ADAMSON; I thought you said a little town that nobody would know.

Mr. THOM: No, I said a little strip of land there that some people thought was not inhabited at all when they looked on the map.

That is a great market country. We raise there tremendous quantities of vegetables, potatoes, cabbages, and all sorts of things that are necessary for the food supply of the country, and the Pennsylvania Railroad runs right down to those two counties, and it is not more than two and a half miles from water on either side, possibly, in some parts of it, and they just take the products of that county and carry them right up to Philadelphia and New York. There is our whole livelihood there, practically, an interstate matter.

Mr. ESCH: Your suggestion is in favor of two Federal commissions and regional commissions, the Interstate Commerce Commission with its administrative functions and then another commission to administer the law, and so on for correction. Then, in addition to that, you wish regional commissions. This whole machinery would involve a very large expenditure, would it not?

Mr. THOM: It would involve an increased expenditure. It would not involve a very large expenditure at all for the United States. It would be an infinitesimal expenditure if it

should be considered as perfecting the system of regulation. It would pay for itself a thousand times over, a million times over, but in its first outgo it would involve comparatively little to this Nation.

MR. ESCH: Of course with the present system of one Interstate Commerce Commission, and then the State commissions, the Federal Government is not involved in the expenditure of the State commissions. If you have the regional commissions of course that expenditure would fall upon the Federal Government. You have probably heard of the Oklahoma plan and the Philadelphia plan of regional commissions?

MR. THOM: No, sir; I do not think I have. I think I have heard of the Philadelphia plan. It was read here the other day.

MR. ESCH: They have adopted part of your plan.

MR. THOM: If it was the one read here the other day before the United States Chamber of Commerce, I was in the hall, but I have not heard of the Oklahoma plan.

MR. ESCH: We have been submitted copies of the proposed plan, and there no doubt will be representatives from Oklahoma here to submit it. I need not go into it, but they have adopted the regional plan, as you have done, grouping the country by railroad systems as much as possible, and not by geographic State lines. Do you think that would be a preferable method of dividing the country?

MR. THOM: That is the very view we had suggested. I did not know Oklahoma had done that, but I think that is the way to do it.

MR. ESCH: In your plan, and in both plans, you permit appeals from the commissions to the Interstate Commerce Commission?

MR. THOM: Yes, sir.

MR. ESCH: Do you not think that would multiply instead of diminish the work of the Interstate Commerce Commission?

Mr. THOM: Oh, no; I think it would greatly diminish it. Let us look at that one moment.

Mr. ESCH: I think it is a very material feature of your plan.

Mr. THOM: I think it would very much diminish the work. The Interstate Commerce Commission would not be bothered at all, as they, in theory now are, in the preparation of records. They would not have to provide through any agency of their own for hearings. The hearings would all be conducted by an agency established by a statute of the United States, which is as independent a source as the authority of the Interstate Commerce Commission itself. The members of these regional commissions would be selected by the President and confirmed by the Senate. Now, they would conduct all hearings on the subject of these rate questions and so forth. They would make up their record, and when the record came to the Interstate Commerce Commission it would not be necessary for it to read that record. It would only be necessary for the members of the Interstate Commerce Commission to consider the parts of it to which exceptions were made, and they would pass, unless they chose to do otherwise, on the points that were distinctly defined by these exceptionions, one following the other, and therefore, what they would have to do in respect to each case would merely be to pass on the controverted points in the case, and not to lose themselves in the mazes of the whole thing as they now have to do in their original jurisdiction.

Mr. ESCH: What do you say with reference to expediting hearings under this regional plan?

Mr. THOM: I think it would vastly expedite them.

Mr. ESCH: Over the existing system?

Mr. THOM: Yes, sir; over the existing system, because the regional commissions would be there on the ground, in session all the time, having short distances to travel, being convenient to every shipping center in the whole place where they would hold anywhere within their regions hearings,

and they would be able to manage in that separated way the controversies growing up in their sections very much quicker than the Interstate Commerce Commission can do over the whole country at present. I think one of the features of it is the expediting of their hearings, and commerce questions ought always to be expedited.

Mr. ESCH: One of the main reasons you allege for having the Federal incorporation and having possibly these regional commissions is to avoid Shreveport cases, is it not?

Mr. THOM: Well, I do not know that I can say just yes to that question, Mr. Esch. I do not think that the question of regional commissions would obviate the arising of such cases as that, except as a result of the whole rate structure everywhere being harmonized, proportioned and made symmetrical by the one authority.

Mr. ESCH: I can not conceive of the two regional commissions having to deal with a question which involves two regions, two little groups, two little systems.

Mr. THOM: The ultimate power of dealing with any such controversy as that, any such difference as that, is right here in the Interstate Commerce Commission, and if one of those regional commissions took one view of what was the sound adjustment of that question, different from what another one did, why that matter would be brought by exceptions right up here to the Interstate Commerce Commission and would be settled by the central authority, and that is one of the arguments that we think shows that there must be a central commission here to harmonize the rate systems and traffic movements throughout the United States, so that they may all be on a fair basis of equality.

Mr. ESCH: Are you familiar with the recommendations which have just been made by Chairman Meyer of the Interstate Commerce Commission, in an address he made before the State Railway Commissioners in this town?

Mr. THOM: Yes, sir; I saw it in the newspaper.

Mr. ESCH: He recommends the enactment of a law which will permit the State commissions in the States involved in say the Shreveport cases sitting with the Commission and hearing the various matters, then coming to some agreement. In your opinion would that be a practical matter?

Mr. THOM: No, not only would it not be practical, but it seems to me open to tremendous objections.

Mr. ESCH: What are they?

Mr. THOM: One is the attempt to deal with a National power by delegating a part of its exercise to an authority it cannot control. Never before in the history of this country have I seen it defended that a National Government should be dependent upon agencies other than its own for the carrying out of its functions, therefore, I think there is tremendous constitutional objection, I will say, certainly objection from the standpoint of sound governmental policy, to the theory that the National Government must now delegate to some agency that it does not create and that it does not control, a part of its function of preventing discrimination between the classes of traffic and between the various States. That is a fundamental reason.

Now, in addition to that, if that body, so created, being a State Commissioner from one State, the State Commissioner from another State, and a member of the Interstate Commerce Commission, should have the ultimate power of dealing with the question, then there is complete surrender of the National Government of its function of determining that question. If the power is not to be surrendered into the hands of that committee, and they are to merely make the record on it, and the Interstate Commerce Commission is, at last, to pass on it, then you have gotten nowhere. The power rests where it is, and it is a mere making a promise to the lips, which is denied to the heart.

The last objection which I will suggest is this: It does not begin to deal with the trouble. The trouble with the States is not merely the trouble of discrimination—I mean the

trouble with the State power of making rates is not merely the trouble of discrimination—it always involves the question of a reasonable and proper, and fair proportion of the contribution of that portion of the traffic to the general upkeep of the facilities of transportation on which all the people are depending, and the suggestion there ignores entirely the latter condition which is inherent in the situation. It does not at all undertake to deal with the question of whether or not a State may deny its contribution to the proper upkeep of the facilities in which two States are interested, and throws the burden of the proper upkeep on the other, or on interstate commerce. So, it seems to me, the remedy is partial, and is objectionable from every standpoint.

MR. ESCH: As I understand you, you endorse the proposition to give the Commission the power to fix a minimum rate.

MR. THOM: Yes, sir.

MR. ESCH: In my State—and if I am in error about this I trust I shall be set straight—the Commission fixes the exact rate. Do you think that would be feasible or a practical suggestion with reference to rate-making, if the—

MR. THOM: Someone the other day started to ask that question, and withdraw it, on an explanation from me. I have certain representative responsibilities here. I hesitate to deal with any question except from that standpoint, if I can avoid it. The representative view which I have is that the maximum and minimum rate is the extent of the power which it would be beneficial for the Commission to exercise. Of course, I know, when being on the stand, I am subject to questions as to what my individual views are, and if I am asked that question I will, of course, give an answer.

MR. ESCH: If you do not care to give it, I will withdraw the question.

MR. THOM: There is nothing except that—except that I may be running counter to the view I expressed in a representative capacity. I have very strong convictions on the

point to which you have alluded, but I should not care to express them unless pressed.

Mr. ESCH: If we give the Commission power to fix minimum rates, would it not then be possible for the Commission to enable proper transportation on the inland waters of the United States or rivers whose banks are paralleled by railroad lines? Have you thought of that aspect, by fixing a minimum rate?

Mr. THOM: Yes, sir; I think a minimum rate would protect water transportation.

Mr. ESCH: Then, we would give to the Interstate Commerce Commission the power of reviving water transportation on the rivers of the United States?

Mr. THOM: Undoubtedly.

Mr. ESCH: The present Interstate Commerce Act has a provision with reference to water competition that if a railroad lowers its rates to meet water competition, it shall not be thereafter permitted to raise them except on a hearing before the Commission, and then only to meet water competition.

Mr. THOM: Yes, sir.

Mr. ESCH: Then, if you grant the right of the Commission to fix a minimum rate, you, by that method, can restore water transportation on the inland waters of the United States?

Mr. THOM: Yes, sir; and it is to be greatly desired.

Mr. ESCH: And it would solve the expenditures of our rivers and harbors bill.

Mr. THOM: Yes, sir; I am a disciple of the philosophy that whatever goes to make up the prosperity of the country, the improvement of water transportation facilities, building additional railroads, and any other facility—commercial facility—that is created, it is not contrary to the broad and proper interests of existing railroad companies, because they must grow as communities grow, and if these things build up communities, their prosperity will be assured to a vastly

greater and to a more wholesome extent than if the community is attempted to be kept down rather than developed.

Mr. ESCH: I am glad to hear you say that. I think it possible to utilize our inland waterways as Germany utilizes hers, for the carriage of the bulk of freight, manufactured products going by mail and paying a higher rate, of course.

Mr. THOM: I think it would be utterly indefensible for the policies of this Government to disregard the natural facilities of its rivers, and of its fields, in dealing with this question of commerce.

Mr. ESCH: You made mention of the fact that you thought the law should provide for the suspension of rates for a period of sixty days, then allowing, of course, the hearing, and if the Commission decided that the increase was just, the railroads, of course, would be benefited by the increase; but if the Commission decided that the rate was excessive, there should be reparation to the shipper to the extent of the excess, instead of the present law, which allows a suspension for ten months. Well, supposing your proposition obtained, and the Commission, at the hearing, decided that the rates were excessive for the period beyond the two months.

Mr. THOM: That is, of course, for all time.

Mr. ESCH: Yes, for all time—that excess would be paid back to the shipper?

Mr. THOM: Yes, sir.

Mr. ESCH: But the shipper has exacted the increased rate from the party with whom he was dealing, and if reparation is made to him, why, he would put that into his own pocket as velvet.

Mr. THOM: Now, the only thing for the law to do is to find out who paid the rate.

Mr. ESCH: That would be a hard thing to do.

Mr. THOM: There is no question about that. Now, if the purchaser should be reimbursed, it should be reimbursed

to him. What I am getting at is that the proper person should be reimbursed, and the law shall point out who that proper person is.

Mr. ESCH: You mentioned the shipper.

Mr. THOM: I said that because that is the easiest way to deal with it, and the shipper can make an arrangement that if there is reparation there shall be a readjustment between them.

Mr. ESCH: I suppose that the Commission taking this length of time in deciding these cases on the suspension calendar is an indication of the great number of such increases. Is that true?

Mr. THOM: Well, no. I think it is because of the great pressure of business of all sorts that they cannot get at it any quicker. Now, my own judgment is that to take, for ten months, a legitimate revenue from the carriers is not in the public interest. It has to be put somewhere. Everything now is reduced to mathematical exactness, with respect to the revenue of the railways, and when you take away anything the loss or pressure of it is felt somewhere, either in decreased maintenance or lack of increased facilities, or in additional burdens somewhere else. Now, I believe, in a matter where most people decide a question of their change in price over the counter—you go in one minute and the price is one thing, and the next minute, you find it another—where in any other business there is an immediate change in the price, to suspend a change in the price of transportation for sixty days is as much as the transportation will bear. That will make them hurry things up. You may have to create a special bureau for that particular purpose, but when you have safeguarded the public from disbursements it seems to me that is as far as you can go.

Mr. ESCH: I think I have arrived at my terminus, Mr. Chairman.

The CHAIRMAN: Senator Brandegee, will you take the witness?

Senator BRANDEGEE: Mr. Thom, I will be very brief. The resolution under which we are acting states on page 9 of the printed hearings one of the subjects which we are directed to investigate is all proposed changes in the organization of the Interstate Commerce Commission, and the Act to Regulate Commerce.

Mr. ADAMSON: Before Senator Brandegee proceeds, it may be that his intimation of brevity is on account of a feeling of constraint due to the hour and day of the week. If there is anything of that sort, I suggest that we might take a recess at this time?

Senator BRANDEGEE: No; nothing like that. I shall not take more than five minutes.

Mr. ADAMSON: I want to be as good to you as I can.

Senator BRANDEGEE: I thank you.

Senator BRANDEGEE: On that theory the committee has asked you to proceed as the first person before us, because it was understood you had some changes to propose, both in the constitution of the Commission and the Act to Regulate Commerce. You have proceeded here for ten days before us and have been the only witness so far, and have outlined in a general tentative way the changes that you had to suggest to the committee. You have stated, however, earlier in the hearing, that your views and recommendations were not final and were subject to modification by anything that might appear in the hearings hereafter that caused you to change your opinion. I do not care to enter upon any cross-examination in detail of the great number of subjects which you have presented—at least, I do not at this time. I prefer to hear from some of the publicists and economists and others who are coming afterwards, and from some of the witnesses which you have stated you are going to produce in considerable number to expatiate and elaborate upon the different branches of the suggestions you have made. You say they are better informed upon those subjects than you are. I simply want, for my own satisfaction and for the purposes

of the record, inasmuch as you put in the record, on page 28, the names of the railway executives who represent, I think you said, about 90 per cent of all the railways in the country, and stated that you appear as the chairman of the advisory committee to those executives——

Mr. THOM: Of the law committee.

Senator BRANDEGEE: Of the law committee. I wanted to ask you who the law committee consisted of?

Mr. THOM: I will try to give their names.

Senator BRANDEGEE: It will be just as well if you will put it into the record later.

Mr. THOM: I will do it now.

Senator BRANDEGEE: About how many are there?

Mr. THOM: There are eleven of them. They are as follows: Mr. E. G. Buckland, Vice President and General Counsel of the New York, New Haven & Hartford Railroad; Mr. Albert H. Harris, General Counsel of the New York Central Lines; Judge Walter C. Noyes, General Counsel of the Delaware & Hudson; Mr. Francis I. Gowen, General Counsel of the Pennsylvania Railroad; Mr. Gardner Lathrop, General Solicitor of the Atchison, Topeka & Santa Fé; Mr. Burton Hanson, General Counsel of the Chicago, Milwaukee & St. Paul; Mr. N. H. Loomis, General Solicitor of the Union Pacific; Mr. Joseph F. Bryson, General Counsel of the Missouri, Kansas & Texas; Mr. C. W. Bunn, General Counsel of the Northern Pacific; Mr. Chester M. Dawes, General Counsel Chicago, Burlington & Quincy, and myself, Alfred P. Thom, General Counsel of the Southern, chairman.

The CHAIRMAN: Are they all general counsel of different railway systems?

Mr. THOM: They are either general counsel or general solicitors. Mr. Lathrop is general solicitor of the Atchison; and Mr. Loomis is general solicitor of the Union Pacific.

Senator BRANDEGEE: By the way, is this 90 per cent of railways that they represent, is that mileage, or in business?

Mr. THOM: It means 90 per cent—I have not calculated the exact percentage—90 per cent, or whatever the proper

percentage is, of the gross earnings of the railroads in the classes made by the Interstate Commerce Commission that earn as much as one million dollars a year.

Senator BRANDEGEE: You spoke about these suggestions that you present here in their behalf, as having been the conclusions reached after much consideration and argument among them. How extensive has that consideration been?

Mr. THOM: It has been very extensive.

Senator BRANDEGEE: Well, over what period of time has it extended?

Mr. THOM: It has extended over eighteen months, and has been brought about in this way, that as many of the executives as possible would be gotten together at a time. It was not possible to get all of them together at one time, and the matter would be discussed among those who could be gotten together, and then another opportunity was seized to bring in others until every railroad executive has had the opportunity to come in and to participate in the discussions, and almost all of them have done so.

Senator BRANDEGEE: With the law committee, do you mean?

Mr. THOM: No, I do not. I mean the law committee, while meeting sometimes with the executives, has not met always, but I have met as representative of the law committee; I have been at all the meetings of the executives.

Senator BRANDEGEE: And you are quite sure that the views you present represent generally the views of all the gentlemen whose names you have given?

Mr. THOM: Yes, sir; you mean of the executives?

Senator BRANDEGEE: Yes, and of the law committee too.

Mr. THOM: And the law committee, with slight exceptions. For instance, I have told you of the difference in opinion on the question of Federal powers entertained by some lawyers. Well, some of those lawyers differ with my committee and to a slight extent with me, in respect to some of the constitutional powers of the Federal Government, but they have acquiesced in the views that are presented, caus-

ing me, however, to acquiesce in the practical desirability of having a certain method of dealing with the issue of stock securities, through incorporation rather than through an intent to control the matter under State charters—not that I have not felt, and not that I do not feel, a very earnest conviction of the desirability of Federal incorporation from every standpoint, but they have convinced me, that we will certainly avoid litigation if we apply a system of governmental regulation of stocks and bonds to the incorporation of the Federal Government, whereas we are likely to invite litigation if we try it otherwise. So that I have agreed with their views, that that is a certain way to prevent litigation, while I have not modified in any sense my view of the constitutional powers of the Federal Government. But as all lawyers differ, and as all men differ, you will find slight differences of opinion, but this is a consensus of our whole consideration of the subject.

Senator BRANDEGEE: I understand you. Now, as I stated, I consider your statement to be the broad outline of the suggestions that you have to make, subject to modification as the hearings progress?

Mr. THOM: Yes.

Senator BRANDEGEE: And that you will have men appear before the committee who are more expert in the various details of what you have suggested than you are yourself?

Mr. THOM: Yes, sir.

Senator BRANDEGEE: And you have detailed information to lay before us in relation to these matters?

Mr. THOM: Yes, sir.

Senator BRANDEGEE: If that is so, I shall not attempt any sort of cross-examination of you at this time. I have finished, Mr. Chairman.

Mr. SIMS: I want to ask one question, and it will not take but a minute or two, with regard to something I overlooked the other day, and that is this, Mr. Thom: Will national incorporation of the existing railroads have the effect to

nullify such State laws as the Pennsylvania and New Jersey full-crew law that you described the other day?

Mr. THOM: That would depend entirely upon your act of incorporation. You could provide either way in respect to matters of that sort. I think you ought to provide for having charge of each situation.

Mr. SIMS: I understood you to make the contention that wherever State laws were of such a character as to harmfully affect or encumber the carrier in its service to another State, by imposing burdens that would affect the service in other States, that that ought to be a subject of national control?

Mr. THOM: I say so now. I understood your question to relate to whether the necessary effect of incorporation would be that. I think that ought to be accomplished by your system of incorporation. I think you can qualify your occupation of the field as you see proper.

Mr. SIMS: Then you do think that Congress does have the power to virtually repeal such laws as would be proper?

Mr. THOM: Undoubtedly; that has been decided, I think, if you will recall, many times in such decisions as this, that where Congress has not occupied the field of regulations the States may in a certain class of cases act until Congress does, but immediately upon Congress occupying that field the State statute gives way to it, and undoubtedly the Federal Government has the right to occupy the field in respect to the manning of trains, just as it has occupied the field of determining the rules of liability from a carrier to employees in interstate commerce, and that the State statutes on that subject, and State laws on that subject, have already given way.

Mr. SIMS: I did not ask you about that. That is all I have to ask.

Mr. ADAMSON: Mr. Chairman, it is very likely that we cannot finish with Mr. Thom today, and it is Saturday afternoon, and we have worked arduously for two weeks, and it is

an invariable custom in the South for white folks and negroes to take Saturday afternoon. I think we had better rest.

(After colloquy among the members of the committee, it was decided that Mr. Hamilton should proceed.)

Mr. HAMILTON: Mr. Thom, I have one question as bearing upon the line of the investigation by Mr. Cullop. Inasmuch as our exports, during the last fiscal year, amounted to about four and one-half billion dollars, and inasmuch as about two billion dollars of those exports were munitions and potential munitions, it is reasonable to suppose, is it not, that when they stack arms in Europe there will be a very decided falling off in export business and in the carrying business of the railroads of this country?

Mr. THOM: That is my expectation.

Mr. HAMILTON: What is the railroad mileage of Canada, Mr. Thom?

Mr. THOM: I cannot tell you.

Mr. HAMILTON: Could you tell me approximately?

Mr. THOM: No, I cannot. I will get it for you.

Mr. HAMILTON: Do you know anything about the earnings of the railroads of Canada?

Mr. THOM: I do not; I can get that and put it in the record for you.

Mr. HAMILTON: Well, another question. How do the Canadian railroad stocks and bonds—that is, so far as those railroads are constructed by private corporations—compare as investments with the stocks and bonds of the railroads of the United States?

Mr. THOM: Well, I am not well enough versed in that to give you that information, but I will tell you what I know about the Canadian Pacific. That is very high, up in the neighborhood of 175 or 180.

Mr. HAMILTON: And they are doing well over there?

Mr. THOM: Yes.

Mr. HAMILTON: How many transcontinental railroads are there—Canadian transcontinental railroads?

Mr. THOM: There are three, the Grand Trunk, Canadian Pacific and the Canadian Northern, but you have got me in a field now, I am afraid, where I cannot help you, because I have not studied the situation in Canada.

Mr. HAMILTON: The point that I had in mind was, inasmuch as this field has been very fully covered by the inquiries heretofore, to try to institute a comparison as to prosperity between the railroads of Canada and the United States, not knowing much about it myself, but assuming I might get information from you.

Mr. THOM: I will have the information obtained for you and put it in the record.

Mr. HAMILTON: Very well. Now, this Canadian trans-continental railroad, the Grand Trunk Pacific, do you know if that has been finished?

Mr. THOM: I do not.

Mr. HAMILTON: You are not prepared at this time——

Mr. THOM: They tell me it is not quite finished.

Mr. HAMILTON: I understand it is not quite finished. You are not prepared at this time to state, I suppose, the method of the construction of that railroad?

Mr. THOM: No, I would not like to go into the Canadian business, because my information about it would not be of value to you.

Mr. HAMILTON: All right. Can you state—and I assume you can—what the mileage of the strictly intrastate railroads of the United States is?

Mr. THOM: I think—confining it to steam roads?

Mr. HAMILTON: Yes.

Mr. THOM: I think there is none at all.

Mr. HAMILTON: Can you give the mileage of the electric railroads of the United States?

Mr. THOM: No, sir, I cannot.

Mr. HAMILTON: Can you state about when these electric lines began to be competitors of the steam lines?

Mr. THOM: I think it has been in the comparatively recent past.

Mr. HAMILTON: It has been, I should imagine, within the last five years—perhaps a little more; I do not know, though.

Mr. THOM: I should say in the last ten years anyhow.

Mr. HAMILTON: Has there been a considerable extension of electric roads within recent times?

Mr. THOM: I see that there has been in the West. Take the country which I am interested in, there has been very little, except at one point. There has been a very considerable development of electric railways in competition with the steam railways, in the southern part of North Carolina and in the northern part of South Carolina, by the Dukes.

Mr. HAMILTON: I notice in my own State (Michigan), Mr. Thom—I have in mind just at this moment a case of a recently constructed electric line. I think they call it a third-rail line. That is a method, is it not?

Mr. THOM: Yes.

Mr. HAMILTON: Which was built between two large towns in the State, in competition with two steam railroads which have been doing business for many years, and the electric line is a very prosperous line, apparently taking a good deal of business away from the steam roads. Does it cost more or less to construct one of these electric roads than it does a steam road, at the outset?

Mr. THOM: Well, that would be a mere impression. My impression is it costs less, but that is a mere impression. I have never had information on the comparative cost.

Mr. HAMILTON: I should imagine that it costs as much, but that the maintenance might be less, but I have no figures in relation to that. The mileage of electric roads is being considerably increased, and as a rule they are in direct competition with the steam roads, and they are being constructed and doing business successfully, apparently, during a period when, as you say, the steam roads have been having difficulties. How do you account for that?

Mr. THOM: It seems to me that there are several ways of accounting for it. In the first place, you do not find the

electric roads handling the same character of business, or the same volume of business. They do not need the same facilities. You go into one of those States you allude to, and I expect you will find tremendous railroad yards of the steam roads. You will find very small railroad yards of the electric roads.

Mr. HAMILTON: Yes; the steam roads have a larger yard.

Mr. THOM: Yes; that is a very large element in the expense of railroads, the establishment of proper yards and terminals, and in addition to that, the steam railroads handle the lowest class of commodities, such as coal, ores of various sorts—raw materials—while the electric roads probably do the city business between the cities, of a higher grade, easier to be handled and at better rates.

Mr. HAMILTON: My observation is these electric roads do a considerable freight business.

Mr. THOM: Do they not do it in a higher class of freight?

Mr. HAMILTON: I should imagine so; yes, sir.

Mr. THOM: That creates a very much larger percentage.

Mr. HAMILTON: But their stations throughout their lines are good. All of their facilities are excellent, and they are doing an increasing business, I should say, without knowing the actual statistics, and these roads have been constructed directly in competition with the steam roads.

Mr. THOM: My idea is that they are engaging in the cream of the business, on which the country cannot sustain itself. The country must sustain itself by the supplies it gets from steam railroads—raw materials, etc.—and you can very well imagine that in a country of cotton, practically, such as the one I have just alluded to down below here, that an electric railway might go to these cotton factories and take away the manufactured goods and carry them to some port or other. and thereby get the very highest priced traffic.

Mr. HAMILTON: Exactly.

Mr. THOM: Whereas they are not doing anything in the way of sustaining the general growth and supplying the

general needs of the country, and those things must be done—in raw materials—must be done at a very much lower rate than the manufactured goods.

Mr. HAMILTON: But, Mr. Thom, is there any reason, so far as power is concerned, or for any other reason, why these electric lines might not increase their freight-carrying power so as to meet the requirements of the various territories which they enter?

Mr. THOM: They can, but when they do it and tap the point of supply which the steam railroads have to tap, in order to supply the human needs, they would then get in a region of the same class of expenses that the steam railroads are under.

Mr. HAMILTON: Steam roads in some instances supplement their own steam power by the use of electricity.

Mr. THOM: At some points; for instance, Manhattan Junction and New York, they have a few.

Mr. HAMILTON: I think that is all for the present, Mr. Thom. Out of deference to the Chairman I have hastened my inquiries.

The CHAIRMAN: I did not wish to limit your inquiries at all. The committee will now take a recess until Wednesday, at 10 o'clock.

Mr. THOM: I am still on the stand?

The CHAIRMAN: You are still on the stand. Mr. Thom, let me ask you to look over the material which I have put in the record, speeches and magazine articles, and reports, and particularly resolutions, bills and amendments upon national incorporation.

Mr. THOM: I have pretty well done that already, but I will do it again between now and next Wednesday.

The CHAIRMAN: Because I would like to question you regarding the national incorporation act.

(The Joint Committee thereupon at 1:00 o'clock p. m., adjourned until Wednesday, December 6, 1916, at 10 o'clock a. m.)

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